COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

MEYO WAHKOTOWIN

ONE COMMUNITY

Final Report Volume II

SUBMISSIONS TO THE COMMISSION

104-06040/

COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

FINAL REPORT – VOLUME II

SUBMISSIONS TO THE COMMISSION

SUBMISSIONS TO THE COMMISSION

Introduction

Section 1:
Métis Family & Community Justice Services Inc.
Submission to the Commission on First Nations and Métis Peoples and Justice Reform
December 2003

Section 2:
Working Together for Safer Communities
Submission to the Commission on First Nations and Métis Peoples and Justice Reform
By Saskatchewan Justice and
Saskatchewan Corrections and Public Safety
January 2003

Section 3:
Presentation to the Commission on First Nations and Métis Peoples and Justice Reform
Correctional Service of Canada
May 2003

Section 4:
Federation of Saskatchewan Indian Nations
– Justice Secretariat Final Submission
February 3, 2004

Section 5:
Submission to the Commission on First Nations and Métis Peoples and Justice Reform
Kearney Healy
November 15, 2003

Section 6:
Magnifying Hope: Shrinking Hopelessness
Submission to the Commission on First Nations and Métis Peoples and Justice Reform
Submitted by Dr. Ronna Jevne
October 2003

Section 7:
The Aboriginal Friendship Centres of Saskatchewan
Report to the Commission on First Nations and
Métis Peoples and Justice Reform
December, 2003

Section 8:
Justice Reform: Governance and Implementation
A Paper Prepared by Merrilee Rasmussen Q.C.
For the Commission on First Nations and
Métis Peoples and Justice Reform
September 2003

Section 9:
Fetal Alcohol Spectrum Disorders and the Justice System
Rae Mitten
January, 2004

Section 10:
A Profile of Aboriginal Children in Regina:
Prospects and Challenges
Saskatchewan Institute of Public Policy,
University of Regina
January 2004

Section 11:
The House of Justice – A Single Trial Court
Gerald T. G. Seniuk and John Borrows
2003

Section 12:
Administration of Justice and How to Improve it:
Applicability and Use of International Human Rights Norms
A Paper Submitted to the Commission on First Nations
and Métis Peoples and Justice Reform
Paul Joffee and Willie Littlechild
January 21, 2004

INTRODUCTION

The Commission on First Nations and Metis Peoples and Justice Reform relied on a number of sources to provide invaluable wisdom and guidance as it sought to find solutions and strategies that would bring about meaningful change in the lives of First Nations and Metis people in Saskatchewan. As outlined in Volume One, the Commission traveled extensively throughout the province, participating in Community Dialogues and town hall meetings, conducting on-site visits and receiving presentations from many organizations and individuals.

Another key component of this information and opinion gathering process was the contracting of and acquisition of papers, formal written presentations and other documents that have been part of the consultation and research process.

These documents reflect the research and opinions of the organizations or individual writers and as such were considered very valuable resources since they have been authored by people with a great deal of expertise in their specific areas of interest.

This Volume contains a number of these submissions which are presented in their entirety. They have not been edited or altered by the Commission. These papers are part of the ongoing discussion on a number of critical issues. It is hoped that these papers will stimulate intellectual discourse regarding a new foundation for justice reform.

These papers do not necessarily represent the opinions of the Commission on First Nations and Metis Peoples or individual Commissioners. In fact, some of the opinions expressed are contrary to the views of individual Commissioners.

Copies of these papers can be requested by contacting the writer or by visiting the website of the Commission on First Nations and Metis Peoples and Justice Reform at www.justicereformcomm.sk.ca

A limited number of copies of this Volume are available in print or on compact disk. For more information on ordering, contact Saskatchewan Justice at

Saskatchewan Justice
1874 Scarth Street
Regina, SK S4P 3V7
Canada
Inquiry Line: (306) 787-8971
webteam@justice.gov.sk.ca

W. Littlechild

J. Wilton Littlechild
Chair
Commission on First Nations and Métis Peoples and Justice Reform

Section 1:

Métis Family & Community Justice Services Inc.

Submission to the Commission on First Nations and Métis Peoples and Justice Reform

December 2003

Métis Family and Community Justice Services Inc

FOREWORD

The following comes directly from the Métis people of Saskatchewan. The recommendations outlined in this report give voice to all who have been greatly affected by the current imbalance in the Saskatchewan Justice system. As with the whole Métis Nation, Métis Family and Community Justice Service Inc. will hold accountable and anticipate positive action by the Government of Saskatchewan and Government of Canada, shortly after the Department of Justice reviews this document. In turn, MFCJS will act on the recommendations found throughout this report through the establishment of a technical working group with representatives from the Métis Nation affiliates.

We expect that this report, supported by the Justice Commission's effort, will act as a catalyst for real change and not sit wasted on a shelf for officials to ignore in disregard for the content.

We appeal to the Government of Saskatchewan and its elected officials to use intellect, compassion, and most importantly, respect for Métis and First Nations in moving forward with the Commission's mandate.

We no longer accept the status quo, as it not only destroys the spirit of Métis and First Nations, it is destroying the general social foundation of this province. We must move forward together. The individuals in communities throughout this province who bravely came forward deserve change. Change is the least we can provide to give faith back to those who have given up. The Government of Saskatchewan must deliver this change with understanding and leadership.

We ask for a timely and comprehensive response to this report and the recommendations outlined. We anticipate building partnerships based on fairness, equality and reciprocity. As a necessary element in any partnership, trust is presently missing between the Métis and Saskatchewan Justice. By working together, trust will evolve slowly and change will occur accordingly.

Jennifer Conley
Research Coordinator/Writer
Metis Family & Community Justice Services, Inc.

ACKNOWLEDGEMENTS

This document is the submission of Métis Family & Community Justice Services inc., on behalf of all the Métis people across Saskatchewan. This submission would not have been possible without the willingness of the Métis people of Saskatchewan to share their stories and experiences regarding the Canadian Criminal Justice System. This submission is a result of their insights, observations and recommendations resulting from their experiences with the criminal justice system. Thank you.

Many people have made important contributions to this submission and require special recognition:

Minister of Métis Family & Community Justice Services, Alex Maurice

Métis Family & Community Justice Services Board of Directors

Métis Family & Community Justice Services, Interim Executive Director, Lynn La Rose

RESEARCH & WRITERS

Jennifer Conley – Justice Researcher, Writer and Coordinator of the Submission;

Gloria Murdock – Smith – Research Consultant and writer

Bonnie Start – Writer of the Community Development Section

Yvonne Vizina – Writer of the Governance Section

Konota Crane - Writer of the Victims Section

Thank you to Kathy Hodgson- Smith for allowing as to attach her document, "In the Best Interests of All – A Report of the People."

A special thanks you to Gloria Murdock –Smith for all of her assistance in the development, coordination and writing of this submission. She played a large role in the development of this report and we thank her.

A special thank you to Kelly Patrick, for her assistance in the editing, guidance and support.

TABLE OF CONTENTS

Foreword i

Acknowledgments ii

1. Introduction 1

2. Background 5

3. Métis – Nation Governance in Saskatchewan 8

- (a) Métis History 8
- (b) Métis Nation Political Authority 10
- (c) Definition of Métis 11
- (d) Métis National Council – 2003 Governing Members 12
- (e) Métis Nation – Social Development Sector 12
- (f) Métis Nation – Saskatchewan 13
- (g) Métis Family & Community Justice Services Inc. 14
- (h) Métis Self-Governance - Otipimsuak 15
- (i) Summary 16

4. Over-Arching Themes

- (a) Racism 17
  - I. What is Racism?
  - II. Colonization and Racism
  - III. Metis Experiences and Realities
  - IV. The Argument of Equality
  - V. Government Response to Racism
  - VI. Media and the Metis Community
- (b) Socio-Economic Challenges 22
  - I. Poverty
- (c) Drug & Alcohol Addictions 26
- (d) Cross-Cultural Training 28
- (e) Employment Equity 29
- (f) Policy Development 30
- (g) Fetal Alcohol Syndrome/Fetal Alcohol Effects 32

5. The Métis Family, the Foundation of the Nation 34

- (a) Métis Youth in the Justice System 37
- (b) Young Offenders 40
- (c) Youth Reintegration 42
- (d) Youth Alcohol & Drug Abuse 44
- (e) Youth Gangs 45
- (f) Justice Education 47
- (g) Métis Women in the Justice System 48
- (h) Elders 51
  - I. Metis Nation – Senate
  - II. History of the Evolution of Roles & Responsibilities

6. Restorative Justice 54

7. Community Development 56

(a) What is Community? 56

8. Victims 59

9. Policing 61

(a) History of Policing 62
(b) Métis/Police Relations 62
(c) Métis Autonomy 63
(d) Community Policing 64
(e) Métis Community Involvement in Policing 65
(f) The Use of Discretion 66
(g) Racism 66
(h) Cross-Cultural Training 67
(i) Employment Equity 68
(j) Excessive Use of Force & Abuse of Authority 68
(k) Métis Representation in Positions of Authority 69
(l) Racial Profiling 69
(m) Language Barriers 70
(n) Under-policing and Delayed Police Response Time 70
(o) Police Complaints Process 70

10. Courts 74

(a) Métis Justice of the Peace 77
(b) Legal Representation 78
(c) Legal Aid 79
(d) Alternative Measures 80
(e) Youth Criminal Justice Act 81

11. Corrections 82

(a) Métis Offenders 83
(b) Geographic Displacement of Métis Offenders 84
(c) Lack of Métis-specific Programming 84
(d) Reintegration 86
(e) Community Responsibility 87
(f) Métis Women Offenders 89
(g) Parole 90

12. Crime Prevention 94
What is Crime Prevention? 94
Funding 96
Positive Programs 97

13. Implementation 99

14. Conclusion – VISION 100

15. Bibliography 103

INTRODUCTION

> You can only judge whether justice has been done afterwards, when it has been substantiated that truth came to people, that help came to people, that reconciliation came to people. Then there has been justice.[1]
>
> – Herman Bianchi

This report is for those who have gone before us and fought to survive in the face of racism, oppression and ignorance. This report is for Lawrence Wegner, Rodney Naistus, Pamela George, Leo LaChance, and the many unnamed Aboriginal men and women who have paid the ultimate price for ignorance and neglect. It is with a heavy heart that this Commission has been established. The price of this Commission is a burden too great to bear and the feelings of pain and loss echo throughout the Aboriginal community. While these men, and women, who were sons, daughters, fathers and mothers, are gone…they are not forgotten.

This is also for the many community members, men, women and youth who have shared their stories, yet again, for another commission. This is for those who shared their lives and stories of pain, abuse and neglect as a result of an inherently flawed justice system. This is a call to action for all who read this, may it be the community, government or commission members, that something must come of this, or the Aboriginal people of Saskatchewan will continue to pay the price, with their lives.

What is the value of a human life? What is the value of an Aboriginal person's life in Saskatchewan? History has shown us very little in the eyes of those in charge. Pamela George's murderers spent less than three years in jail. Carney Nerland spent even less time in jail for the murder of Leo LaChance. The acquittal of the men in Melfort truly exemplifies our answer and the message is loud and clear.

This will not be a glossy or pretty report. Some may view this report as being too negative or too radical. It's time to get real and face reality. This is reality for many Métis and First Nations people of Saskatchewan and it's time for people to know the truth. The words may be harsh or fall on deaf ears but this is time for change. The federal and provincial governments need to heed these words wisely as the community is watching and waiting for action. Something must come from this Commission.

Many community members across Saskatchewan have voiced concerns regarding the fate of this commission. Will this be yet another report to sit on the shelf? We don't have those answers but we must come up with them. Another concern is that this commission is bound to make recommendations that are "fiscally responsible." Real change is necessary to improve the lives of Aboriginal people in Saskatchewan and as such, for the province as a whole. We do not need "surface" changes, but real significant improvements to the justice system and the socio-economic conditions of Métis people of Saskatchewan. The discussions, observations and recommendations developed in this submission will act as a catalyst for change. This is only the beginning to change the long and perilous journey that many have gone down before and whose children do not deserve to bear witness as well.

---

[1] Bianchi, H. (1994). *Justice as Sanctuary: Toward a New System of Crime Control.* Bloomington: Indiana University Press.

SUBMISSION OVERVIEW

The development of the Métis Family & Community Justice Services, Inc., submission to the Commission on First Nation and Métis Peoples and Justice Reform has been guided by the following principles.

1. The drafting and final submission of the MFCJS submission will be representative of the Métis peoples of Saskatchewan,
2. The right to self-determination for the Métis people will be an integral part of the submission,
3. The recognition of the Métis Peoples of Saskatchewan as a distinct society and because of this Métis peoples have certain rights that are distinct from First Nations and Inuit peoples. This has been commented on in the Supreme Court of Canada decision regarding Powley.
4. The history of the Métis peoples in Saskatchewan must be included as well as the continuing struggle for rights and recognition of the Métis people of Saskatchewan,
5. Every effort will be made to ensure that the final document will be reflective of the views of the Métis peoples of Saskatchewan and Métis Family and Community Justice Services, as an affiliate of the Métis Nation – Saskatchewan.

Métis Family & Community Justice Services Inc. hired a half-time Justice Researcher to assist the Commission on First Nations and Métis Peoples and Justice Reform in achieving its mandate. An important role of the Justice Researcher was to act in a liaison capacity between the Commission and the Métis peoples of Saskatchewan. In this capacity the Justice Researcher also accompanied the Commissioners to many community dialogues, formal presentations, Town Hall meetings and roundtables focusing on the eight critical issues identified by the Commissioner.

Secondary to this, the Justice Researcher conducted dialogue with communities without the Commission on First Nations and Métis People and Justice Reform in attendance. The Justice Researcher went to communities that Métis Family & Community Justice Inc. identified as being critical or upon invitation from the community. It is important to note that all Métis communities were not visited, as this was not possible. Métis Family and Community Justice Services hopes that the positions and views included in this position paper are acceptable to all Métis people in Saskatchewan. Every effort was made to ensure that the final document is reflective of Métis communities as best possible.

The primary goal of the Justice Researcher was coordinating, researching and writing of Métis Family and Community Justice Services formal response to the Commission on First Nations and Métis Peoples and Justice Reform. The development of the MFCJS submission will include:

- Feedback, direction and information from Saskatchewan Métis communities with regard to issues with the current justice system;
- Feedback from the Commission on First Nations and Métis Peoples and Justice Reform Community Dialogues;
- Feedback from the Commission on First Nations and Métis Peoples and Justice Reform site visits;
- Feedback from the Commission on First Nations and Métis Peoples and Justice Reform formal presentations;
- Feedback from the Commission on First Nations and Métis Peoples and Justice Reform roundtables based on the identified eight critical issues;

- Feedback and direction from Métis Regions, Métis Locals, Métis Women, Métis Youth, Métis Elders, and any other Métis organization that wished to contribute;
- Inclusion of Saskatchewan Métis resources and reference material pertaining to the criminal justice system; and
- Review of previous Justice Commissions and reviews. Particularly the Saskatchewan Métis Justice Review Committee, the Royal Commission on Aboriginal Peoples and the Aboriginal Justice Inquiry of Manitoba.

LIMITATIONS

One of the challenges of researching and writing of this submission is the clear lack of published research regarding Métis people. (Barkwell: 1991). While great strides have been made in this area through the Gabriel Dumont Institute, Métis National Council, and the Manitoba Métis Federation, there is still a great need for research. Information is especially lacking in the area of justice, health, economic development, and child welfare. (Barkwell: 1999). Métis Family and Community Justice Services have also been conducting research recently in the area of justice. There is still a great need for more resources in this area, which calls for the government to provide more resources for such endeavors. It also indicates a need for intersectoral collaboration between the Métis Nation – Saskatchewan, Métis National Council, Métis Nation affiliates and academic institutions such as Saskatchewan Indian Federated College, University of Saskatchewan and University of Regina and any other interested partners.

This also identifies the need for creation of a Saskatchewan Métis Research Institute with a mandate to conduct research into governance, justice, health, economic development, child welfare and any other areas identified as a priority by the Métis Nation – Saskatchewan and various stakeholders.

PROJECT APPROACH

> "The position of the Métis people remains that they have an inherent right to be a self-governing nation and to have control over law making in the administration of justice. The Métis have always claimed sovereignty over matters relating to their own people and have continually struggled to be self-governing."[2]

The preceding quote is the Métis Society of Saskatchewan justice position statement to the Saskatchewan Métis Justice Review Committee of 1992. This is the fundamental principle guiding this submission, as it was over a decade ago. It is within this framework that this document is created.

Another main theme and approach of this submission is found within the mandate of the Métis Nation – Saskatchewan. The Métis Nation – Saskatchewan has the mandate to pursue the rights of the Métis within Saskatchewan and to work towards development of the social, cultural, economic, civil, political and legal rights of the Métis. It is within this tenet that this submission is gathered. The Métis Nation – Saskatchewan seeks to build fair and equitable partnerships with the rest of Saskatchewan. These partnerships must be based on mutual respect and understanding for the development of governance structures within the Métis Nation.[3] Respecting the governance structure includes respecting the Métis Nation- Saskatchewan's right to control the administration of justice and law-making authority such as the Constitution of the Métis Nation, and the Métis Act. The Nation also desires the right to become equitable members of society and contributing to the economy of Saskatchewan, for the betterment of the province as a whole.[4]

---

[2] Linn, Patricia (1992). *Report of the Saskatchewan Métis Justice Review Committee.* Regina: Saskatchewan Justice. Métis Society of Saskatchewan – Justice Position Statement.

[3] Metis Nation – Saskatchewan Website. www.Metisnation-sask.com. March 31, 2003.

[4] Ibid.

Métis Family & Community Justice Services Inc., has two main goals in the development of our submission:

1. To provide the Commission on First Nations and Métis Peoples and Justice Reform of Métis perspectives on justice related issues within Saskatchewan;

2. To develop achievable short –term and long-term recommendations that will:

   - Reduce levels of Métis offending;
   - Reduce levels of Métis victimization;
   - Reduce levels of Métis recidivism;
   - Improve the safety of Métis communities in Saskatchewan;
   - Identify an implementation vehicle suitable to Métis people of Saskatchewan that will ensure that recommendations of the Commission on First Nations and Métis Peoples and Justice will be implemented.

The Commission on First Nations and Métis Peoples and Justice Reform has identified eight critical areas in the pursuit of fulfilling their mandate. They are as follows:

1. Racism
2. Restorative Justice
3. Youth/Children
4. Crime Prevention
5. Policing
6. Victims and Violence
7. Justice Institutions
8. Governance and Community Development

Métis Family and Community Justice will attempt to encapsulate the Métis perspectives on the above issues in this submission and provide recommendations for future justice reform based on those perspectives. This report reflects the concerns, issues, and solutions from Métis Elders, communities, individuals, organizations and youth. Métis people will be watching to ensure that their voices have been heard. In the spirit of Herman Bianchi, we will only know that this Commission has been successful by its outcome. The real measure of success will be improving the lives of Métis people in Saskatchewan.

BACKGROUND –
CONTINUED DISREGARD FOR THE MÉTIS PERSPECTIVE

The Métis people of Saskatchewan have an inherent right to the resources and bounty of this country and a birthright to govern and control their own affairs. Beginning with the laws of separation and oppression by the Canadian government in the 1880's the Métis of Saskatchewan continue their fight for recognition of rights to the land and wealth of Canada. Recent developments within the courts have finally affirmed these rights. Although the Métis community still await policy changes within the Provincial government, the recent Supreme Court decision of Powley bids favorably on the Métis of Saskatchewan to enjoy hunting, fishing and land rights in their communities originally taken by the Canadian government.

Since the repatriation of the Canadian Constitution in 1982, the Métis Nation -Saskatchewan (MNS) has endeavored to make progress in the areas of social, cultural, economic, civil, political and legal rights. While the entrenchment of the rights of the Métis people, as one of the three Aboriginal Peoples of Canada, is important, the Métis Nation - Saskatchewan feels that the Constitutional process cannot provide all of the solutions to the immediate needs of the Métis in Saskatchewan. Through the MNS governing structure, numerous issues can be dealt with in a democratic way through elected leadership and capacity development to operate institutions that are effective but understaffed and limited for further development.

Despite the overwhelming number of issues and demands faced by the leadership and its institutions the Métis Nation remains committed to the principles of the Nation, seeking out ways of addressing the needs of Métis people and to alleviate the immediate hardships faced by Métis individuals. The Métis struggle as Aboriginal people has resulted in the achievement of Métis rights and will work itself successfully towards self-government. Work continues toward establishing governance of the programs and services offered within Métis urban and rural communities, of Métis historic lands, and of the culture and language of Métis. Saskatchewan Métis seek to build real partnerships with the rest of Saskatchewan, partnerships that build governance structures within the Métis Nation, and to become equal players in the development of Saskatchewan's economy for the betterment of the province as a whole.

The Métis people of Saskatchewan continue to be subjected to unfair and ignorant practices within the systems they ironically are dependent upon. In Justice, Aboriginal people have become the primary clients and victims throughout all levels of the legal system, from police to incarceration. Aboriginal people in Saskatchewan constitute the most over-represented group in the justice system in Canada. Jail populations are at upwards of seventy five percent Aboriginal peoples. The high numbers speak to the systemic racism and a colonizing power that is entrenched within this antiquated system that claims to control true justice in this country. Statistics show that most crimes committed by Aboriginal men, women and youth are due to one of the following: poverty within the community; not understanding the language and expectations of this system; or the common practice of over policing of Aboriginal people.

Aboriginal youth are the most vulnerable to life on the street. Their experiences include police brutality and the lure of gang membership in urban settings in Saskatchewan. This quickly draws them into the hands of the law and eventually into correctional centers. Incarceration rates for Aboriginal youth are higher than their adult counterparts. These facts, in addition to the recent unexplained deaths of Aboriginal men in Saskatoon, are creating great concern with the community, forcing government to act. Government's response was to create yet another study. Consequently a Commission was established to review these facts and to make recommendations for change. This step managed to silence (for the time being) the opposition and put a hold on positive change within the Justice system while the problem was once again studied. The hope from the Métis community was that maybe, against all odds, change would occur with the creation of this entity, but only if its creation was premised on a respectful, reciprocal, partnership building approach, respecting all parties and their positions within the Aboriginal community in Saskatchewan.

Contrary to the basic expectations of the Métis community regarding the establishment of this Commission, the MNS experienced a complete absence of basic professional consideration during its creation. The leaders of the Métis Nation are affronted due to the poor and questionable treatment during the creation and establishment of the Commission on First Nations and Métis Justice Reform (JRC) for a number of valid reasons. Intentionally denying the Métis their voice at a table where a review of Métis people's oppression is to be evaluated is reprehensible on the part of the government. A parallel example of this can be drawn from the past where history is once again being repeated. Louis Riel's assertion of self-determination in the 1800's was treated as an affront to the paternalistic government and was subsequently quashed with Riel being put to death by an uninformed government from eastern Canada.

Regarding the current issue, the Métis Nation came to the table during the early negotiations for the establishment of the JRC, even though it appeared to be a First Nations driven initiative. This issue was put aside and the MNS proceeded in an effort to create partnerships and build bridges with all those involved. Early on there were signals that the government had mishandled this Commission, not just with Métis Nation but also for other Aboriginal groups in Saskatchewan. To effectively represent the MNS, two very credible and solid names were proposed from the Métis community. They were rejected outright. Reasons are still unknown. The MNS believed the process was based on principles of equality and reciprocity. Unfortunately this was not so.

Understandably the Métis people of Saskatchewan are outraged. Following this treatment and the outright rejection of the MNS's position there was no other reason to continue with this process, the MNS pulled out of it altogether. After the mishap with government, attempts were made to restore the MNS position at the table, to no avail, following the rejection of the two names. A boycott was seen as the most rational decision since all other options to be open, adaptable and be patient had been intentionally destroyed by the government. This boycott received the full support of the MNS leadership.

The Saskatchewan government went ahead and selected a person that was purported to represent the Saskatchewan Métis community. In a formal response from government regarding this, the MNS was told that a Métis representative had been chosen. However, the government appointed Métis representative further clarified her position in a meeting with MFCJS, where she stated that she was not appointed to represent the Métis people of Saskatchewan. In an attempt to restore Métis input into the work of the JRC, senior justice staff invited MFCJS to prepare a report reflecting the Métis communities view on the subject and to be part of the technical aspects of the JRC.

The way the Métis community was treated signifies a contravention against the (JRC's) purposes, goals and principles in establishing this Commission. This Commission was supposed to build bridges and establish partnerships in order to review the way the justice system deals with Aboriginal people in Saskatchewan. Undermining and outright rejection of the Métis position and its contributions to this Commission by unilaterally appointing someone other than those names previously put forward is seen as contempt for the Métis Nation.

As this scenario unraveled with regard to membership, government intent on solidifying their representatives on the JRC appointed a person and in doing so violated ethics in relation to the Aboriginal community in Saskatchewan. A JRC Commissioner was involved in a very high profile case in Melfort. This case involved the violation of young Aboriginal girl by three non-Aboriginal men. Throughout the Commission's mandate many concerns regarding this issue were raised by community members. Community members requested that this Commissioner resign as they viewed his involvement in this case as a severe conflict of interest both morally and ethically.

The position of the Métis community regarding this case is that a young Aboriginal girl has been both privately and publicly violated, first through the rape by three men from Melfort and then from a justice system and its servants. As the awareness of this hypocritical incident got out within the Aboriginal community, more and more people made public pleas to both government and the JRC Commissioner to either drop the case or resign from the JRC. These concerns were brought to the Commission directly as well as to government. Government quickly distanced itself from the issue and claimed that it (JRC) was an independent Commission and they had no legal right to interfere, since they had completed their selection processes already. The Commission's Chair maintains a position that they are following the letter of the law and they have other jobs to fulfill, as they are only 1/3 Commissioners. In order to address the issue the services of an out-of-province legal opinion was requested and it found there was no conflict of interest in this lawyer's actions by representing the family prosecuting the young Aboriginal girl.

Regardless of the justice system's laws about a lawyers ethics or conflict of interest, it is strikingly clear that this lawyer violated the interests of the Saskatchewan Aboriginal community by accepting an appointment that requires an amount of conscientiousness to the Aboriginal for ones views and actions. Especially since he has been charged with the responsibility to review the injustices and work with this very community in his role on the JRC. Rightfully so, this has caused outrage because it violates human ethics toward the young girl, her family but also the whole Aboriginal community in Saskatchewan.

The position taken by the government and the JRC is that they will follow the common law of Canada, regardless of the human rights that were violated in this case. Understandably Canadian law does not apply in this matter as interpreted by the Aboriginal community. It is a challenge for the Aboriginal community to trust yet another Commission to review and assess the relationship between the Canadian justice system and the Aboriginal community, with or without them. This so-called conflict of interest issue represents a microcosm of the larger issues facing Métis people in Saskatchewan in relation to the justice system.

MÉTIS NATION GOVERNANCE IN SASKATCHEWAN

AN OVERVIEW OF MÉTIS SELF-GOVERNANCE AND SELF-DETERMINATION

In establishing parameters for understanding the position and content of this section, one must have an understanding of Métis history and how Métis people came to be an autonomous nation. By respecting and accepting these fundamental realities, one can begin to gain an understanding of the role Métis political organizations have played within Canada, how this relates to Métis governance in Saskatchewan today, and the role it must play in reforming the justice system. The following section provides a brief overview of Métis history intended to assist in this learning process.

MÉTIS HISTORY

The Métis Nation refers to individuals descended from certain First Nations and European ancestors who came together during the fur trade era of the 17th century and who are today represented by the Métis National Council within Canada. It is not common for a culture of people to know so much of the specifics of their origin. Métis origins are not shrouded in mysticism, nor are they built solely from archaeological evidence. Perhaps some day, hundreds or thousands of years from now, we will become legends unto ourselves. But for now, we have written records, oral histories and photographs of some of our ancestors who forged a new Nation of people; created a functional language – Michif - and carved out a homeland of settlements and trade routes across vast expanses of land. Métis culture emerged with our ancestors who were the children of the fur trade.

Since much of the fur trading activity was based in the region of the Great Lakes, we know this is where some of our Métis ancestors originated. It is important to remember, however, that with the exploration of the western parts of the landscape, British, Scottish and French fur trade employees spent many years with First Nations' communities hence contributing to the large number of mixed-blood children across the west.

Our mixed-blood ancestors were unique, even in those early days of existence during the 1600's. They found that they did not "fit in" with maternal tribal groups, nor were they accepted as equal within their paternal working environments. The politics of humanity were alive and well, even in those days. And so, as the mixed-blood people found companionship and camaraderie with each other, it became a natural progression of events to share mixed-cultural practices, mixed-languages and to continue the propagation of mixed marriages.

Naturally, as contact and trade relations increased in the 1700's, common experiences and practices were being shared amongst the mixed-blood people. Frequently, mixed-blood people would leave tribal communities and create smaller mixed-blood communities near the fur trading forts or in other strategically placed areas. The historic Métis community of Ile-a-la-Crosse, Saskatchewan dates back to at least 1776, although there were even older Métis communities in the Great Lakes region. As well, in other parts of the western regions around the Hudson's Bay area, the Lowland Cree people became known as the Homeguard Crees, although it is believed that many were mixed-blood people. They provided essential services to the fort employees, helping them to survive through onerous seasonal climates that the traders were not prepared for. Métis men could easily make a living by trapping, guiding, interpreting, moving canoes of furs and other roles that required mediation between the First Nations and European traders. While the men took on these roles, women provided domestic services required, hunted small game, harvested botanicals and manufactured adequate clothing and equipment for the residents of the camps and forts. In essence, these women had to teach the newcomers how to survive. One of the cornerstones of Métis pride in Saskatchewan today is the Gabriel Dumont Institute, which trains highly skilled and much sought after teachers, specializing in cross-cultural relations. In the days of the fur trade, however, it was a matter of life and death for the visitors.

In the eastern regions, mixed-blood communities were being established. By the early 1800's thriving communities were established in Sault St. Marie and Winnipeg, as well as northern United States' cities such as Detroit, Michili-Mackinac, Chicago, Milwaukee, Green Bay, and Prairie du Chien. The War of 1812 led to a takeover of land south of the Great Lakes by the Americans, causing an exodus of Métis living in that region to Minnesota, North Dakota and upwards toward Red River. Some stayed, but many were forced to relocate causing great hardship to their families. During this time many Métis people were working independently as labourers and were available to hire on contract. Some went to the Red River area of what is now southern Manitoba and began to provide services to the North West Company providing buffalo meat and pemmican. Communities of Plains Métis arose around the West, separated geographically but united by ties of kinship.[5]

In the west, many Métis ancestral birth records cite the place of birth as North West Territories, which does not refer to the north of 60 area of today, but rather, the prairie regions of Canada. Although Métis cultural communities were separated by great geographic distances, distinctive cultural practices were developing including language and economic systems. Living in a variety of environments and geographical locations, mixed-blood people adapted to the local customs of survival with Euro-customs, creating a manageable lifestyle for their families. For those who had common history and cultural practice, it was desirable to live within the constructs of a mixed-blood community. By the later part of the 1800's, the Red River settlement was home to nearly 10,000 French and English descended Métis.

While it is difficult to separate political developments from the evolution of a new-born culture, it is important to remember that on a practical level the Métis wished to ensure not only the survival of their families but a good quality of life that supported their cultural practices. There was no lack of creativity employed in this regard. Imagine for a moment, what it would be like to live without any of the conveniences of a developed world. Imagine lacking the collective support of tribal groups or colonial societies. Imagine the need to find a way of using only the skills you had to build a life. Imagine the bonds that would be forged with others living in the same situation.

Métis people created new technologies (like the York Boat and the Red River Cart) that could facilitate commerce. Children were encouraged to be multi-lingual. Men became known for their rifle skills, physical strength and endurance. After long hours of domestic work, women created beautiful artifacts that also served practical purposes. Beaded decorations mimicking flowers graced clothing, gun cases, saddles and furniture. Then, as now, Métis design is seen as a symbol of identity and artistic skill. One had to have many skills to live in the days of the fur trade.

As the development of Canada continued, however, Métis people began to see the loss of their traditional livelihoods as the fur trade waned. Even more devastating was the eradication of the great buffalo herds as a means of controlling Indian populations and breaking the Métis control of the pemmican trade. Facing these new circumstances, the Métis people of the western prairies took up agricultural practices as a means of supplementing their work as freighters. Finding success in this regard, Métis communities continued to grow and flourish until the negotiations for Confederation in 1867 created an environment forcing the Métis into political assertiveness to protect their land and lifestyle. The creation of the Manitoba Act in 1870 provided the Métis with some provisions demanded by the Métis Provisional Government but it also forced Louis Riel out of the country to escape persecution by Canada's military. It was at this time that several members of Riel's Provisional Government were hunted down and killed by the Canadian military.

It was after 1870 that the Canadian government devised a plan to hoodwink the Métis people out of their land using the scrip system, creating a blood-soaked stain on the fabric of Canadian history that lingers until this day. The Manitoba Act had arranged for 1,400,000 acres of land to be set aside for Métis individuals. Scrip was to be given out in 240 or 160-acre blocks. But, in the years that followed, the Métis would see most of this land in the possession of other people. Scrip fraud, land speculators and harassment would all play a role in ensuring the Métis would be forced away. Some left to go to the northern United States, but others moved west to Saskatchewan and Alberta (which did not become provinces until 1905). In 1873, Métis people had established a community government at St. Laurent, with Gabriel Dumont as their President.[6]

---

[5] Brizinski, Peggy. Knots in a String. 2nd Edition. University Extension Press. University of Saskatchewan. 1993. p.129

[6] Ibid. pp. 137.

In 1879 the federal government amended the Dominion Lands Act to extend the granting of scrip to Métis people in the "Northwest Territories", but nothing was being done to carry this out.[7] Still, during the early 1880s, the Métis were working hard to build a life to conserve what was left of the Bison and to bring order to the region. But once again, land speculators were showing up as word of the plans for expansion of the Canadian National Railway got around. Once again, the Métis were seen as an obstacle in this process. Land prices rose and fell as plans changed and drought hit the prairies. The Canadian government was in no mood to listen to the western Métis, impoverished Indians or farmers who couldn't sell their grain. Louis Riel was brought back to Canada by his fellow Métis. The subsequent events of 1885 are well documented, leaving a tragic and shocking legacy by a national government. After engaging Canadian armed forces in battle at Batoche, Saskatchewan, the Métis who survived felt the full-fledged persecution of those who would stop at nothing to seize the lands of the Métis. The Canadian government went even further in carrying out their belief that the execution of Louis Riel would put an end to the Métis resistance once and for all. They were wrong.

Further north in Saskatchewan, Métis people were able to continue their unfettered traditional cultural lifestyles as hunters and trappers for a while longer, but the Province of Saskatchewan was soon entrenched in Confederation, scrip commissions eventually came, jurisdiction over natural resources was transferred to Saskatchewan in 1930, and finally, the state and church joined forces in the form of residential schools, forcing Métis people off the land and into communities where, for many, the horror of an unbreakable cycle of dependency was born.

Over these generations, one of the most damaging effects history has left with us is the removal of Métis people from their traditional lands. Coupled with restricted access to education systems in the late 1800's, many Métis came to be known as "road-allowance people". Extremely poor and living in small areas between towns and road ways where there were no taxes, children of Métis families were not allowed in town schools, nor were they generally allowed to attend schools established for First Nations people - sometimes being forcefully removed by the local Indian Agent. Later, the residential school experience crushed what was left of most Métis people's desire to have anything more to do with school. This is extremely significant in understanding how disadvantaged the Métis people had become, not by their own design, but as a result of deliberate action by the Canadian government. How does a Nation of people recover from such a history?

MÉTIS NATION POLITICAL AUTHORITY

The development of unity through political organization once again became the life-blood of the Métis. The Saskatchewan Métis Society (now the Métis Nation - Saskatchewan) was formed in 1938. This political movement, along with others across the Métis Homeland, led to a revitalization of the Métis Nation and its communities. As well, these political movements and their structural manifestations formed the initial frameworks for the community, provincial and national governance structure of the Métis Nation in place today.

In addition to this Métis revitalization, a new Aboriginal political awareness began to develop within Canada in as early as the 1950s. The deplorable socio-economic conditions facing Aboriginal people were a national embarrassment. As well, Aboriginal individuals and communities began to seek justice through the Canadian judiciary. Similar to the Aboriginal and settler confrontations of the 1800s, the Métis were in the forefront of this new agenda pushing to have their rights and needs addressed.

In order to move forward on this political agenda, the Métis Nation joined with non-status Indians and other Aboriginal peoples in forming regional / provincial political organizations and structures to draw attention to the disgraceful socio-economic conditions facing Aboriginal peoples living both on and off reserves throughout Canada. These newly formed regional and provincial associations / organizations were brought together under a national organization, the Native Council of Canada (NCC). However, even within these pan-Aboriginal organizations the Métis Nation's distinct and identifiable existence persevered.

In 1982, these pan-Aboriginal organizations realized a monumental success on their political agenda with the recognition and protection of existing Aboriginal and Treaty rights in the Canadian Constitution. In particular, this was a triumph for the Métis Nation with the explicit recognition of the Métis as one of Canada's three distinct Aboriginal peoples within s.35(2) of the *Constitution Act, 1982*. Following the 1982 constitutional amendment, a series of four First Ministers Conferences (FMC) were to be held in hopes of elaborating on and agreeing to additional changes needed to address and implement the new Aboriginal provisions of the Constitution Act, 1982.

---

[7] Ibid pp.140

Prior to these FMCs, it became apparent that the Métis Nation needed to once again represent itself on a national level through its own voice - a Métis voice. The pan-Aboriginal structure of the NCC (now known as the Congress of Aboriginal Peoples) did not allow for the Métis Nation to effectively represent itself. The Métis Nation was concerned then and continues to be concerned that when the Métis are grouped into pan-Aboriginal processes with non-status Indians and other Aboriginal peoples, their distinct existence and Aboriginal rights are not addressed, recognized and protected. Therefore, in March 1983, the Métis Nation separated from the NCC to form the Métis National Council - its own Métis-specific national representative body.

Aligned with this national direction, the Métis people and their communities, which were then also part of regional pan-Aboriginal organizations began to separate from those organizations to return to their own Métis-specific governance structures. These Métis-specific governance structures (the MNC and its Governing Members in five provinces) now represent the contemporary manifestation of the Métis Nation's existence, as an Aboriginal People within Canada. Through individual and collective action these political representative structures continue to push forward on the Métis Nation's struggle for the implementation of its inherent right to self-government, while continuing to evolve as governance structures for the Métis Nation.

The MNC is the national body that is mandated by the Governing Members collectively coming together. It was created to provide a national and international voice for the Métis Nation within Canada. In this capacity, the MNC has represented the Métis Nation within all constitutional processes since 1983, is recognized by the Government of Canada as the governing structure representing the Métis Nation within Canada, intervenes on behalf of the Métis Nation within on-going litigation involving Métis rights and represents the Métis Nation at an international level within the United Nations and the Organization of American States. The MNC is also responsible for developing national policy to move forward the self-government vision and aspirations of the Métis Nation. This is achieved through on-going bilateral processes with the Government of Canada. The MNC does not undertake direct program and service delivery initiatives to Métis individuals, which is the responsibility of the Governing Members, but acts as a facilitator for the implementation of Métis self-government through its national structure and the Governing Members.[8]

DEFINITION OF MÉTIS

In September 2002, the Métis National Council adopted a definition of Métis that is consistent with the wishes of the Nation. They said:

THEREFORE BE IT RESOLVED that the Métis Nation adopts the following defined terms for its national definition of Métis;

"Historic Métis Nation" means the Aboriginal people then known as Métis or Half-Breeds who resided in Historic Métis Nation Homeland;

"Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-Breeds as they were then known;

"Métis Nation" means the Aboriginal people descended from the Historic Métis Nation, which is now comprised of all Métis Nation citizens and is one of the "aboriginal peoples of Canada" within s.35 of the Constitution Act of 1982;"

Distinct from other Aboriginal Peoples" means distinct for cultural and nationhood purposes.

---

[8] Métis National Council. *Snapshot of the Nation*. 2002. (p.6-7)

MÉTIS NATIONAL COUNCIL: 2003 GOVERNING MEMBERS

Métis National Council

President - Clem Chartier

Métis Provincial Council of British Columbia

President - Harley Desjarlais

Métis Nation of Alberta

President - Audrey Poitras

Métis Nation - Saskatchewan

President - Clem Chartier

Manitoba Métis Federation

President - David Chartrand

Métis Nation of Ontario

President - Tony Belcourt

The Métis National Council six-member Board of Governors is comprised of the five Presidents of the Governing Members and a National President. In addition, the Métis National Council has established a Cabinet structure overseeing Social Development, Economic Development, Health, Culture and Heritage, Environment, Governance, International Affairs, Women and Youth. In addition, the MNC has a number of Working Groups including one on Justice and Corrections.

MÉTIS NATIONAL COUNCIL: SOCIAL DEVELOPMENT SECTOR

Justice and Corrections

The MNC has an on-going working relationship and maintains regular communication with Justice Canada and Corrections Canada on a number of fronts. An MNC Justice / Corrections Working Group made up of the Governing Members is tasked with building a new relationship between Canada and the Métis Nation in these areas. The Working Group serves as a conduit for regional and local input in policy matters and assists in the identification and promotion of best practices in community justice and corrections initiatives.

In 2001, a discussion paper entitled, *"Towards a New Partnership"* was developed through on-going consultations with the MNC Justice / Corrections Working Group. The purpose of the discussion paper was to:

- facilitate dialogue and develop a process in order to engage a new and mutually beneficial partnership between the MNC and Justice Canada;
- provide improved Métis access and control of Justice Canada's community justice programming; and
- increase Métis input in broader justice policy development

The proposed foundation for developing a new relationship between the MNC and Justice Canada is a national Protocol. Discussions on such a Protocol are on going between the MNC and Justice Canada. This new relationship is also timely in light of the renewal of the Aboriginal Justice Strategy. The AJS does not have a history of appreciating or addressing the unique needs of the Métis. It is hoped that this new relationship between the MNC and Justice Canada will ensure improved Métis involvement. As well, it is hoped this new relationship will act as an impetus to overcome problems of inequitable Métis access to other Justice Canada community justice initiatives such as the Crime Prevention Strategy, Youth, Victims Support, and others.

A multi-year agreement covering 2002 - 2004 was negotiated between the MNC and Corrections Service Canada, and supports the MNC in developing mechanisms and work plans to obtain the views and recommendations of the Métis Nation in the renewal of Section 81 and 84 of the Corrections and Conditional Release Act. It is anticipated that changes to this Act will consider alternative sentencing, youth diversion and improved rehabilitation efforts which will lead to a reduction in the over representation of Métis offenders in Canada's correctional institutions.

Other issues being discussed with Corrections Service Canada include: HIV / AIDS strategies, Métis Cultural curriculum for use in federal correctional institutions, recruitment and retention of Métis personnel within CSC and Métis access to community-based corrections services.

In March of 2001, the MNC participated in a planning session of the Aboriginal Research Branch of CSC in Winnipeg to determine priorities for the current fiscal year. Métis representatives placed emphasis on the need for increased internal and external research on Métis offenders and Métis support initiatives. In order to assist in its policy development role, MNC representatives toured federal corrections facilities in Joyceville, Grande Valley and the Elizabeth McNeil House. As well, the MNC met with Native Brotherhoods and Sisterhoods to determine the issues and concerns of Métis within federal correctional facilities.[9]

MÉTIS NATION - SASKATCHEWAN

The Métis Nation - Saskatchewan (MNS) is the MNC Governing Member that represents the interests of approximately 70,000 Métis people in Saskatchewan. The MNS has the mandate to pursue the recognition of Métis social, cultural, civil, political and legal rights within Saskatchewan and to work towards the implementation of the Métis Nation's inherent right of self-government.

In 1993, the MNS adopted a Constitution that established the MNS as a self-governing entity outside of the Saskatchewan Non-Profit Corporations Act. However, at the same time, the MNS maintained a Secretariat, incorporated under the SNPC, for the sole purpose of carrying out the administrative duties of the MNS. Within the MNS Constitution, a Provincial Métis Council is established which consists of eighteen councilors who are elected by ballot box every four years and governs the MNS for that term. The MNS Constitution also establishes a Legislative Assembly that has the authority within the MNS to enact legislation, regulations and rules that govern the affairs and conduct of Métis within Saskatchewan. To date, the MNS Legislative Assembly has enacted the Métis Wildlife and Conservation Act, Senate Act, Métis Nation Legislative Assembly Act, Citizenship Act and Election Act. These Métis laws now govern the MNS and its citizens.

On January 28, 2002, the Government of Saskatchewan proclaimed The Métis Act within the Saskatchewan Legislature. The Métis Act has three principle features:

- to recognize the distinct culture and heritage of the Métis people, as well as their contributions to the Province of Saskatchewan;

---

[9] Ibid pp.15-16

- to establish a process for bilateral negotiations between the MNS and the Government of Saskatchewan based on four areas of harvesting, lands, governance and capacity; and
- to establish the legal recognition of the MNS Secretariat Inc's existence outside of the SNCA. The Métis Act makes the MNS the first Governing Member of the Métis National Council to have its corporate existence recognized outside of provincial not-for-profit corporation legislation. In addition, an accompanying Memorandum of Understanding between the MNS and the Government of Saskatchewan engages a bilateral process for the MNS to address Métis governance issues, as well as, other important agenda topics.[10]

The Métis Nation - Saskatchewan has well-established service delivery infrastructures through affiliated structures and institutions, known as MNS Affiliates. These include:

- Métis Employment and Training of Saskatchewan Inc. (METSI)
- Gabriel Dumont Institute (GDI)
- SaskNative Economic Development Corporation (SNEDCO)
- Clarence Campeau Development Fund (CCDF)
- Provincial Métis Housing Corporation (PMHC)
- Métis Addictions Council of Saskatchewan Inc. (MACSI)
- Métis Family and Community Justice Services (MFJCS)
- Saskatchewan Métis Recreation, Culture and Youth Inc. (SMRCYI)

These MNS Affiliates have evolved as a part of the MNS' overall governance structure. Although the Affiliates are separate corporations, all MNS Affiliates are owned and operated by the MNS with the PMC's Minister responsible acting as Chair on the respective Affiliate Board of Directors to ensure that the ultimate responsibility for these institutions and structures rests with the elected leadership of the MNS who are accountable to the grass-roots membership.[11]

MÉTIS FAMILY & COMMUNITY JUSTICE SERVICES INC.

Métis Family & Community Justice Services Inc. (MFCJS) was incorporated in 1992 as an affiliate of the Métis Nation – Saskatchewan, as a result of our recognition of the need to empower Métis communities to address the social and cultural well being of Métis individuals, families, and communities throughout Saskatchewan. MFCJS is responsible for the planning and coordination of Métis justice and social programs within the province. In conjunction with the Métis Nation – Saskatchewan's vision to establish Métis Government to oversee the affairs of its people, MFCJS seeks to empower Métis to plan, develop, implement and administer social and justice services by Métis, for Métis.

MFCJS is governed by a Board of Directors consisting of provincial representatives of the twelve Métis regions throughout Saskatchewan. Representatives to the Board are selected by Métis Regional Councils based on criteria stipulated in the bylaws of MFCJS. Appointments are for a period of three years. The Minister of MFCJS, Alex Maurice, also oversees MFCJS and provides direction. The Minister is a regional director who has been delegated the MFCJS portfolio by the MNS Executive.

---

[10] Ibid p. 81-84

[11] Ibid pp.87

Mission

The mission of MFCJS is to promote, strengthen and rebuild the Métis Nation and their communities by supporting cultural and spiritual needs and empowering family centered social and justice programs. As well, MFCJS is responsible in overseeing and coordinating the direction and development of Métis social and justice services.

Mandate

MFCJS is responsible for facilitating, coordinating and supporting the planning, development, implementation, management and monitoring of local community justice and social programs. MFCJS may on occasion assume direct responsibility when other community structures are not yet available to administer programs.

MÉTIS SELF-GOVERNANCE: OTIPIMSUAK

Since the Métis culture emerged within Canada, Métis people have worked hard to be recognized as a distinct people, and to continue to be Otipimsuak - their own bosses. In many ways, the Métis have been successful, retaining a vibrant culture and traditional practices. In other ways, much autonomy over land, resources and economic self-sufficiency has been forcefully wrested from the Métis people. So what does this mean today, in terms of Métis self-governance?

> There is a subtle difference in terminology that must be clarified. The term "governance" is not synonymous with "government". Confusing these terms can have unfortunate consequences. Problems with governance and policy issues become defined implicitly as a problem of "government". This often results in the perception that the onus for fixing it rests with the government. Governance is about how governments and other social organizations interact, how they relate to citizens, and how decisions are taken in a complex world. Thus, governance is a process whereby societies or organizations make important decisions, how they determine who is involved in the process, and how they render account. That is, through the agreements, procedures, conventions or policies that define who gets power, how decisions are taken and how accountability is rendered.[12]

The Métis people have not lost their will to be self-governing, nor have they given up the fight to be recognized Métis Governments. While these struggles for autonomy go on, Métis people continue to work at developing Métis-specific organizations that can provide some measure of self-governance.

In an article published by Mr. Clem Chartier on behalf of the Métis Nation - Saskatchewan and the Métis National Council, he said:

> To many, Métis self-government is inconceivable, perhaps because we have been without a land base for the past century. Moreover, many Métis now live in urban areas or small rural communities, and still others live in northern communities under municipal government structures established by the provinces. All that has kept the Métis united over the past century has been the various political and cultural movements and organizations that have continued to exist.
>
> Yet, there is an exception to the landlessness of the Métis with eight Métis settlements set aside by the province of Alberta in 1938. These communities currently exercise a degree of self-government based on provincial legislation.
>
> Because of differences in circumstances, our people will be forging ahead with self-government and self-governing institutions both on and off a land base. It must be pointed out, however, that although self-

---

[12] Graham, John; Bruce Amos, Tim Plumptre. Principles for Good Governance in the 21st Century. Policy Brief No. 15. Institute On Governance. August 2003

government is possible off a land base, many members of the Métis Nation will not be satisfied with this approach. Many of our people want to acquire a land and resource base upon which they can continue to exist and flourish as a distinct people.

Métis self-government would not be without problems for our people and for Canadians generally. To begin with, many of our people suffer the consequences of colonization; they have become dependent on the Canadian State. It is clear that more education and community development will have to take place in order to continue working on the process of decolonization. Additionally, we need to continue to educate the general public about who we are - as a nation, a culture, and a people with rights.[13]

SUMMARY

This paper has been compiled for submission to the Commission on First Nations and Métis Peoples and Justice Reform. The goal of the Commission is to "identify efficient, effective and financially responsible reforms to the justice system. These reforms should improve the justice system so it reflects the strengths and values of aboriginal people, and ultimately lead to safer communities in Saskatchewan."[14]

It is imperative that the Commission on First Nations and Métis Peoples and Justice Reform honour and respect the autonomy and recommendations of the Métis Nation - Saskatchewan. It is imperative that the Commission on First Nations and Métis Peoples and Justice Reform support new initiatives that not only lead to safer communities in Saskatchewan, but lead to safer environments for Métis people, free from persecution, voicelessness and denial of self-representation. The Métis Nation - Saskatchewan's Minister of Justice, Mr. Alex Maurice is the current Chair of Métis Family and Community Justice Services of Saskatchewan Inc. This position holds the mandated authority of the Justice portfolio on behalf of Métis citizens residing in Saskatchewan. It is the responsibility of Saskatchewan Justice to ensure that Métis citizens have access to Métis-specific justice programming, that the public at large is educated with respect to the rights of Métis people and that Métis Nation institutions are equipped with adequate human and financial resources to ensure this happens. The current study of justice reform is an opportunity for all stakeholders to learn about justice issues and to make positive change for the future.

---

[13] Chartier, Clem. *Aboriginal Self Government and the Metis Nation.* Aboriginal Self-Government in Canada. 2nd Edition, Purich Publishing Ltd. Saskatoon, 1999. p. 119.

[14] Saskatchewan Executive Council News Release. Justice Commission Established. Justice #01-859. November 2001.

OVER-ARCHING THEMES

RACISM

Racism exists throughout society and has weaved an intricate web throughout Saskatchewan's social systems, institutions and individual worldviews. It is ingrained into the fabric of our society. It does not affect everyone in the same way. For some it is only a passing annoyance while for others it permeates their lives. One who has not experienced overt or subvert racism, discrimination, stereotyping, and oppression cannot fully understand the ramifications of such a disease. It is the root cause of Aboriginal peoples over-representation in all social services systems in Saskatchewan, the reason why many Aboriginal people have been killed within these systems and the impetuous for the creation of the JRC. The JRC's mandate is to reflect the words of the community members during the community dialogues and to provide solutions to the issues. Fundamental to its work is the critical issue of racism. The MFCJS cannot accept work that falls short of this goal, in particular if the JRC's work ignores racism as the underpinning of all activities in relation to Aboriginal people in the justice system.

What is Racism?

The Saskatchewan Human Rights Commission defines racism as a, "combination of stereo-typing, prejudice and discrimination."[15] The SHRC also goes on to define the following four terms that make up racism:

1. Stereotype: is a generalization used to define a group of people based only on the words or deeds of one member of the group.
2. Prejudice: an attitude, almost always negative, about a whole group of people. Prejudice is exactly that, a pre-judgment based on stereotypes that we create with incomplete or inaccurate facts.
3. Discrimination: what we do because of our stereotypes and prejudices. It's the action we take against others and it humiliates, belittles or disadvantages the victim. Racial discrimination denies people benefits and opportunities that other people enjoy in areas like housing, employment, education and public services.
4. Systemic Racism/Discrimination: a continuation of traditionally accepted inequities that keep certain groups from fully participating in the workplace, in our schools, and in many other social institutions.

Saskatchewan public government institutions operate on the premise that each person who accesses these services have similar rights and that each person receive the same level of services. This philosophy presumes that all Saskatchewan people receive similar treatment by these institutions, such as the social and justice system. Legislation, policies and procedures, which are supposed to assist Métis people, are in fact, working against them. This is the most invasive form of racism and is difficult to see and even more difficult to erase. This form of discrimination denies Métis people the right to effectively become part of the community, institutions and social systems.

Discrimination within the justice system denies Métis people their human rights at every turn. The foundation of the criminal justice system is British law created from superior, patronizing, colonizing worldviews, in direct contrast to Aboriginal worldviews or pedagogies. Aboriginal views of the world are based on a foundation of respect, harmony, reciprocity and wholeness. Métis values, history, culture, worldview and social structure are in direct opposition to that which British law is based. The imposition of European beliefs, values and laws has had an adverse impact upon Métis people, as exemplified by the criminal justice system.

[15] Saskatchewan Human Rights Commission (2003). *Erasing Racism.* Retrieved on March 2003 from http://www.gov.sk.ca/shrc/ErasingRacism.pdf. (pp. 1)

> "...Systemic discrimination involves the concept that the application of uniform standards, common rules, and treatment of people who are not the same constitutes a form of discrimination. It means in treating unlike people alike, adverse consequences, hardship or injustice may result..."[16]

Racism is mostly about ignorance. The current justice system is inherently racist as it enforces the dominant society's beliefs, values and structure upon others. This sends out the message of racial superiority and reinforces the Métis people into the margins of society.

> "So, for me what is racism? It's ignorance, it's not having knowledge of who we are, what our histories are, so there's no place for us to begin. A lot of times we have no common kind of place."
>
> Elder at Racism Roundtable
>
> "Racism. So we tried not to start with racism. I think a lot of that is it becomes just a daily part of your life so you kind of learn to deal with that and I don't think – I think there's a lot of us who don't put it at the top of our list anymore because it has become a part of growing up and having to learn to live with that. A lot of us that have learned to deal with it...."
>
> CUMFI Presentation

Saskatchewan is a very segregated society. As such, there is very little understanding of who Aboriginal people are and where they came from. When people do not associate with one another, there can be no understanding. As this segregation continues, information about the other group becomes distorted and misconceptions evolve into stereotyping and therefore affect the way one person views another. Crime and incarceration rates continue to rise. As this happens a mentality of "them versus us" is created whereby the non-Aboriginal population armed with little understanding of the issues of crime and racism assume that the differences are too great to overcome. A group consciousness is established based on fear and misunderstanding that one group is the problem and is causing the issues. This is what is primarily taking place in Saskatchewan.

Part of the solution to stop racism is not only to recognize racism in Saskatchewan but to embrace it with all its problems. Only then will it be transformed into a situation that can be changed. This transformation needs to come from both Aboriginal and non-Aboriginal people. An interchange of ideas on our differences and similarities needs to occur. Community forums that bring together a broad cross-section of society to speak openly about race relations, experiences and realities of all its members will help address the gap in information. This will add to cultural awareness and allow us to embrace our community mosaic. Another solution could include an interchange between communities through work placements and secondments within schools. Programs such as Katimavik are good examples of how this can happen.

Colonization and Racism

When discussing racism one cannot ignore the role that history and colonization has played in altering Métis experiences and worldviews. Much of the literature regarding Aboriginal over-representation in the criminal justice system clearly references colonialism and historical government practices and policies as primary contributing factors. Patricia Monture-Angus, unequivocally agrees that colonialism is the root cause of Aboriginal over-representation in the criminal justice system. "Recognizing colonialism as a central explanation – if not the central explanation – for Aboriginal overrepresentation in the justice system is essential."

> "Colonialism involves a relationship, which leaves one side dependent on the other to define the world. At the individual level, colonialism involves a situation where one individual is forced to relate to

---

[16] Royal Commission on Aboriginal People. (1996). A Report on Aboriginal people & criminal justice in Canada: Bridging the Cultural Divide. (p.p. 34). Ottawa: Canadian Communication Group – Publishing.

> another on terms unilaterally defined by another. The justice system becomes a central institution with which to impose the way of life of the dominant society."[17]

The correlation between colonialism and Aboriginal over-representation cannot be ignored as it explains the disadvantaged position of Aboriginal people in Canada. A result of colonization and discriminatory government policies is a justice system with systemic discrimination. The literature also suggested that the Canadian criminal justice system is biased against Aboriginal people because it is a system built on European ideologies.

Métis Experiences and Realities

Racism is an ugly word and discussion about it strikes fear throughout those who speak of it. Many people choose to ignore it or pretend that it does not exist. This is a luxury reserved for those who do not experience it. Racism is a reality for most Métis people in Saskatchewan today. While many people are afraid to address this issue, we cannot continue to ignore or deny this. The creation of the JRC owes its very creation to this fact in this province. Due to the systemic and individual racism inflicted upon the Aboriginal people of this province, many have lost their lives due to this and as a result the Commission was created to examine and report on this. It is time to bring light to the Métis experience of racism in Saskatchewan. While some do not want to look at the past or focus on negative experiences, we cannot do anything less. It is from the history and the negative experiences that we are able to learn. Many Métis people have internalized racism today and it has become our reality. This internalized oppression causes many illnesses, which can be seen in the over-representation of Aboriginal people in the health services. Maria Campbell identifies the effect that racism had on Métis identity in her novel, "Halfbreed:"

> "The townspeople would stand on the sidewalks and hurl insults at us. Some would say, "Halfbreeds are in town, hide your valuables." If we walked into stores the white women and their children would leave and the storekeepers' wives, sons and daughters would watch that we didn't steal anything. I noticed a change in my parents' and other adults' attitudes. They were happy and proud until we drove into town, then everyone became quiet and looked different."[18]

In the past, many Métis would choose not to identify as being Métis, for fear of being subjected to the oppression, stereotyping and discrimination that was rampant after 1885. For those Métis who were fair-skinned this was easier to obtain than those who had darker skin color. Having pride and a strong sense and understanding of a personal culture helps one to retain a healthy sense of self. Regardless of the winds of change over the years many Métis still proudly identify as being Métis and hold on to their history, culture and way of life.

Recent statistics on Métis membership across Canada indicates that in some areas of the country, those claiming Métis status has risen upwards of 216 %. The researchers studying this phenomenon attribute this to the recent court cases that recognize Métis inherent rights to land and resources, but also to the growing pride and the desire to belong to an established Métis community in Canada. In Saskatchewan the membership has risen to 26%.

Today, there are many Métis who have not identified as being Métis because of the historical baggage and fear from the past. Many Métis people do not fit into the preconceived notion of who is Aboriginal and who is not. During community meetings established by MFCJS, people discussed the ostracism they faced from First Nations, due to not only the perception that First Nations have more Indian blood quantum, but that they are more distinct and have more rights because of this. To some people, skin colour really matters, and Métis do not fit into a one size fits all conception. It is this paradox that plagues Métis people to this day.

---

[17] McCaskill. (1983). As quoted in: Monture-Angus, P. (1996). Lessons in Decolonization: Aboriginal overrepresentation in the Canadian Criminal Justice System. In Long, D.A. & O.P. Dickason, (eds.). *Visions of the heart. Toronto:* Harcourt Brace. (pp. 289).

[18] Campbell, M. (1973). *Halfbreed.* Toronto: McClelland and Stewart.

The Argument of "Equality"

The argument of equality has become a recent topic of contention by some political pundits and media outlets. While the application of uniform standards to Métis people may appear to be fair and desirable, this argument is misleading. When dealing with Métis people, attention must be paid to their history and socio-economic conditions. While those less educated on the history of Métis view Aboriginal rights as the imposition of inequality, it is impossible to ignore the devastating effects of history on the Métis.

> "While treating everyone identically might seem to imply that external values or considerations would not effect the objective application of rules, we believe that such a view would be mistaken. Any decision enforces some value. When the value enforced is that of the dominant group in society, however, it is easy for members of the dominant group to look upon the decision not as value-based, but as neutral."[19]

The application of uniform standards or "one size fits all" justice system may be fair and seem impartial, however this is not the case. When dealing with Métis people, attention must be paid to the role racism, colonization and oppression has played in their current position in society. While treating everyone fairly seems like an ideal goal, this belief is misleading. Even though members of the dominant society believe that they are being fair and impartial by treating everyone equal, they are in fact being discriminatory. The imposition of the dominant system's value on those of another race or cultural background is discrimination. The justice system has become the ways and means of enforcing the dominant society's values and beliefs. It is within this belief structure that systemic discrimination finds it roots.

Government Response to Racism

The current government response to deal with racism is education through cross-cultural training and employment equity. While these are important efforts, they are simply not adequate to deal with the magnitude of the problem. Racism, stereotyping and discrimination are part of one's worldview or perceptions on how they see the world. What is required for real change to occur is a paradigm shift or changes to the fundamental foundations of society. This will require more than two-day cultural awareness training. This will require more than meeting an employment equity quota. What is required is a shift in the way people view one another or to build bridges through understanding and respect.

Cross cultural training needs to be redesigned to be more inclusive of Métis worldviews, ways of knowing and realities. Current cross-cultural training does not account for this. What is required is more than merely understanding our history; rather it is about who we are today, where we came from and where we are going. This process has to engage both Aboriginal and Non-Aboriginal people from every cross section of society; coming together committed to exploring and breaking down the barriers created by racism. Current cross-cultural training does not account for this. What would be more useful to a justice system employee is a training package based on Métis understandings and beliefs in contemporary society. It is imperative to understand where we come from as a people. However and possibly more important, an understanding of Métis in contemporary society is greatly needed.

Employment Equity is an important program. However, positions for employment equity must be more than token positions. Greater attention should be paid to recruitment and retainment of Métis people in positions of authority. We are not bashing the employment equity initiatives however it is simply not enough to have "brown faces" enforcing existing paternalistic government policies and practices. We recommend that more efforts be made to include Métis representation on boards, committees and policy units that develop and implement cross-cultural and employment equity programming.

It is also important to build capacity in Métis organizations that already exist with partnered decision-making processes with other levels of government.

---

[19] Law Commission on Canada (1991). *Aboriginal Peoples and Criminal Justice. Equality, Respect and the Search for Justice.* Ottawa: Law Commission.

Media and the Métis Community

The role that the media plays in informing the global community is paramount. Newspapers, magazines, television programs, print media, etc., play a huge role in our understandings of each other and in developing worldviews. When one specific group is portrayed negatively over and over again in the media, people begin to believe what is presented to them. It becomes propaganda in its purest form, to continue the spread of false information against one race of people.

If an individual were to read the newspapers as of late, they would have a very negative opinion of Métis people. Aboriginal people, being over-represented in the justice system garners more negative news stories than other Saskatchewan people. All are repetitive and sensationalized.

There is very little media coverage of the positive that is happening in the Métis community. If newspapers were the only form of communication one would be led to believe that the only issues relating to Métis people are under-funded elections, infighting and unaccountability. Of course this is not the case, as there have been some very positive movements in the Métis community.

WE RECOMMEND THAT:

1. The Government of Saskatchewan review and revise current human rights legislation in partnership with the Métis Nation - Saskatchewan in an effort to expand and/or strengthen laws concerning enforcement, it's applicability and the extensive time that it takes to bring a charge to court.
2. The Government of Saskatchewan in partnership with Métis Nation - Saskatchewan review existing government policies and procedures for systemic discrimination.
3. The Government of Saskatchewan establish policy and legislation concerning Métis employment equity programs to be implemented in all employment sectors including private businesses. Create incentives for participation and implementation of such policies especially concerning government departments and private businesses.
4. Everyone involved in the criminal justice system receive a revised Aboriginal awareness-training program that strengthens the existing programs to make programs accountable, progressive and ongoing.
5. We recommend the development of assessment tools that will be used to monitor and screen out police employees who exhibit racial intolerance. Complementing this would be the development of strict policy relating to disciplinary action and dismissal.
6. Recommend a national and provincial campaign against racism that includes Métis realities and worldview.
7. That Media outlets become more aware of Métis culture and history before presenting information to the public.
8. That Media outlets share with the general public, positive examples of Metis self determination and contributions to society.

SOCIO-ECONOMIC CHALLENGES

Poverty, colonization, racism and oppression have become a "heavy blanket" worn by Métis people for over 100 years. This burden has been compared to the infested blankets that were intentionally distributed to Aboriginal people in the 1700's that were laced with small pox, aimed at killing those that became infected. The high stress levels and the mental and physical illness that is caused by the" heavy blanket" cannot be ignored. The impact of this burden is especially felt in relation to being dependant upon the colonizing government for ones' very existence, as shown by the high welfare rates in many communities. Regarding the welfare state, community members portray it well, when saying:

> "The government has made us so dependent and that's a major concern that I have. So dependent [that] things won't happen unless the government says yes or no, or says boo. You know, because that dependency is there, people have become so dependent on government that they can't do anything for themselves."
>
> Beauval Community Dialogue Participant
>
> "The long - term affects of social conditions Métis families face, have been felt for many decades in Canada, and the solutions to these problems have not been forthcoming from governments.... Social conditions prevail as one of the primary areas of concern reflected by the examination of responses from the women at the community level. These responses are identifying areas such as housing, economic development and health as key areas to be addressed..."
>
> Métis Women of Saskatchewan Inc.
>
> "We can deal with all the justice issues but we don't deal with the economic, social development issues in our communities. We're just looking at pie in the sky, I feel, because there's serious issues of unemployment, lack of opportunities for our young people, our people at the local level. What else is there for them? Hopelessness, low self-esteem, and the list could go on..."
>
> Beauval Community Dialogue Participant

In the Northwestern Métis communities, the government claims that more money per capita is expended within these communities than anywhere else in Saskatchewan. This figure fails to take into account that all of this money is to further the dependency cycle and the welfare state. It speaks to the focus on keeping people on welfare as well as the inability of government initiatives to bring people to a self-sustaining place in their community. Rather then continuing this vicious cycle of poverty and destitution, initiative is needed to help people become intellectually, emotionally, spiritually and physically independent.

The statistics bear out the bleak situation Métis find themselves in the province of Saskatchewan. Due to the limbo Métis people have been placed into regarding which government has jurisdiction over Métis people, the socio-economic situation for Métis paints a grave picture. In terms of income, Métis people are one of the poorest Aboriginal groups in Saskatchewan.

According to the 2001 Census, 976,305 Canadians identified as being Aboriginal. This accounts for 3.3% of Canada's total population, compared to 2.8% in 1996. 292, 310 identified as Métis, which is approximately 30% of the Canadian Aboriginal population. This is an increase of 43% from 204,120 identifying as being Métis in 1996. Statistics Canada states that, "The growth of the Métis identity population in recent years appears to be affected by more than the fertility and mortality of the population." Possible explanations for this dramatic increase in population can be attributed to a greater cultural consciousness, various judicial court decisions, government policy changes and possible improvement in census coverage of this population.[20] Another factor is that many Aboriginal people do not participate in the census or self-identify for a number of reasons. This may impact on the accuracy of the census data.

---

[20] Statistics Canada. (2003). *2001 Census: Analysis Series: Aboriginal peoples and Canada: A demographic profile*. Ministry of Industry

The need for accurate population figures is paramount due to the fact that government funding is driven by statistics and membership. The Métis Nation - Saskatchewan programs and services are severely under-funded. There is a real disparity in funding between First Nations and Métis peoples. The Métis Nation - Saskatchewan estimates Saskatchewan Métis population to be around 70,000. The government insists that the Métis make up 43,695 of the total Aboriginal population in Saskatchewan that indicates a 22% growth in population from 1996.

For instance Statistics Canada, Aboriginal Peoples Survey 2001, shows an average income for Aboriginal people at $15,700 per year compared with $25,400 for Non-Aboriginals, which is a 38% difference in yearly income levels. In urban settings Aboriginal people are even poorer, and this is where the majority of Métis live. The inability to secure good paying jobs is a further indicator of the extreme poverty that exists in Métis communities. Aboriginal people's unemployment rates are 24% compared to 10% for Non-Aboriginals.

In a study conducted for the *Aboriginal Justice Inquiry in Manitoba*, La Prairie has drawn the association of high crime rates in the Aboriginal population that are directly linked to high poverty levels. Saskatchewan has the highest rates of admissions to custody in the country, at 76% of total admissions. This amounts to ten times the number compared to the Non-Aboriginal population at 8%. If the association drawn by La Prairie is correct then Saskatchewan must have the highest poverty rates as well. It also appears that living in poverty becomes a training ground for crime and contact with the law. Of course other factors are at play as well, such as systemic racism that permeates the justice system and creates clients out of Aboriginal people.

It is not necessary to draw out all depressing statistics that demonstrate that Aboriginal communities have lower income levels and higher unemployment levels than non-Aboriginal people. This is what the North Western communities in Saskatchewan stated during the consultations for this project. They said they are tired of getting handouts because handouts make them feel like second-class citizens. They want the proper resources and support to enable them to look after their own affairs. As Chief Darcy Bear stated on CBC's The National, "the best social program is a job".

This help needs to come from many sources including government and private industry that will assist Métis people overcome the barriers of setting up their own businesses, seeking higher education, being confident, capable people. Due to the Métis people in Saskatchewan living in a dependant welfare state, poor health and violent lifestyle are associated with this environment.

Naturally Aboriginal people will experience the depression and frustration of living in such conditions. Consequently this situation will eventually cause physical illness that is once again displayed in the high numbers of Aboriginal people admitted to hospitals for various illnesses. It has been said previously if one wanted to visit with family and friends, a Friendship Center would be the natural place. Unfortunately, the hospital seems to be a place where many of the Aboriginal community are concentrated due to the high rates of illness.

Apart from the huge challenges that both communities and governments of the Métis Nation are up against, the enduring strength that remains is pride in being distinct peoples with inherent rights to the resources of the land. The strength also comes from the belief in the spirit of the creator and in each other. Métis people have survived and surpassed every negative prediction of their downfall. Beginning from the Métis provisional governments in the mid 1800's to the long history of being denied their rights, perseverance is an innate gift that will keep the Métis overcoming socio-economic hurdles.

The aspect of the Métis Nation, which is unique, is the hard working nature of individuals creating many success stories of individuals who have overcome great odds to establish lucrative businesses and senior level jobs. The statistics also show that the Métis Nation has an employment rate at 52% whereas the First Nations community is at 41%. Educational levels for Métis people continue to rise and a phenomenon of population explosion has occurred in the Métis Nations in Canada in the last 5 years according to Statistics Canada. The Canadian increase is at 43%, in Saskatchewan the rise is at 22%. The reasons are varied, but can be attributed to rising awareness as a nation, recent court cases and the rising pride gaining within Métis people. The recent

Powley decision was a huge victory. The court decision refers to the need to address Métis membership, which is one issue that will be addressed by the MNS over the coming months as governments align themselves into setting policies that reflect inherent Métis rights to land and resources.

The recent Powley decision, by the Supreme Court is an example of the promise of a better tomorrow and the patience and stamina of the nation to wait while courts re-affirm Métis rights to land and resources. It is anticipated that the negative socio-economic conditions will decrease due to the pride and confidence this decision will instill into the Métis Nation.

Poverty

The colonization of Canada was a destructive force upon the Métis people of Canada. Many government policies and practices have had an adverse effect on Métis people such as law enforcement policies, scrip and non-recognition of Métis rights by the state. The dispossession of Métis from their land base through scrip was a further injustice, which resulted in the loss of a land base. The fraudulent scrip system greatly attributed to the poverty of Métis people and non-recognition of Métis rights.

> "Coupled with this dispossession of land is what we called the outlawing of the Métis way of life. The government- particularly the federal government in 1981 – has told us that whatever Aboriginal rights or title we had to land and resources have been extinguished because of the scrip distribution system. This system was a means of defrauding the Métis of their land and dispossessing them of their rights. Now our people cannot hunt, trap or fish for food to feed their families. We are charged and convicted for exercising our Aboriginal rights."[21]

For hundreds of years Métis people have been punished for exercising their rights to hunt, fish and trap, first by the Hudson Bay Company and then by the Canadian government. Today, many Métis are being persecuted for exercising this right. As the federal government continues to deny Métis rights, these paramount issues are being pushed into court. This may not be the right venue to define Métis rights, but Métis are left with little choice. The recent Powley decision has confirmed the right to hunt, fish and trap. However, the previous denial of rights has led to impoverished conditions in many areas.

Métis people have faced many injustices through the scrip system and the marginalization and dispossession from their historical land base. The effects of colonization are felt in contemporary society and are exhibited by the social dysfunction that is evident in many Métis communities today. Many Métis people involved in the criminal justice system experience alcohol and drug addictions that can lead to violent crime or criminal behaviour to support their habits such as property crimes or poverty-based crimes. These people are often ignored by mainstream society and are seen as being "less than human." We disagree with this statement, as all human life is valuable in the circle of life.

> "It is generally accepted that social conditions of high unemployment, lack of education, alcohol and drug abuse and harsh living conditions lead to higher crime rates. Add to this a sense of isolation, inadequate housing and overcrowded living conditions, little or no programming for youth, a sense of mistrust in the justice system, issues of domestic abuse, racism and a lack of capacity to deal with some of these fundamental issues and it is a little wonder many feel the justice system is in crisis."[22]

According to the 2001 Census, Métis people's socio-economic situation is improving but still lags behind Euro-Canadian citizens. There are many underlying issues that bring Métis people in contact with the police such as alcohol and drug addiction, poverty, physical, sexual and emotional abuse, low education, underemployment, and various other social dysfunctions. Contact with the police also signifies the failure of institutions and social safety nets that are supposed to intervene long before contact with the criminal justice system. One has to ask, why are we continually punishing and incarcerating people for being poor?

---

[21] Chartier, C. (1994). Metis Perspectives. In Gosse, R., J. Y. Henderson & R. Carter, (Ed.), Continuing Poundmaker and Riel's quest – Presentations made at a conference on Aboriginal Peoples and Justice. Saskatoon: Purich Publishing. (pp 85).

[22] RCMP "F" Division Submission to the Commission on First Nations & Metis Peoples and Justice Reform. March 13, 2003.

What has become very clear throughout the mandate of the Commission on First Nations and Métis Peoples and Justice Reform, and throughout the community consultation process, is that we must work to improve the social conditions of Métis people to reduce levels of offending, reduce levels of victimizations, reduce Métis recidivism and improve the safety of Métis communities in Saskatchewan. By improving the social conditions of Métis people, this will decrease contact between the police and Métis people of this province. For any reforms to be successful, we must address the poor socio-economic status faced by many Métis people in Saskatchewan. Reparations must be made for the role that history has played in the marginalization of Métis people.

WE RECOMMEND THAT:

1. A multi-department, comprehensive, multi-year restoration initiative is required for the Métis Nation in Saskatchewan. Therefore the recommendation is to create a comprehensive plan and commitment to reverse the negative socio-economic burdens and restore Métis rights and access to resources.

DRUG AND ALCOHOL ADDICTIONS

> "Drug addiction and alcoholism is a symptom of a larger problem. It is an escape from the intolerable conditions faced on a daily basis by Métis families. The result is another reason for the high rates of incarceration."
>
> WRIA Presentation

The Métis Addiction Council of Saskatchewan (MACSI) has a long-standing reputation for helping the Saskatchewan Métis community to deal with drug and alcohol addictions. Through three institutions in Saskatchewan, MACSI's goal is to reduce and eventually eliminate the harmful effects of alcohol and drug abuse and to assist communities in restoring a balanced and harmonious lifestyle.

Although MACSI is certainly a necessity in the drug and alcohol field in Saskatchewan, more is needed to deal with the underlying causes of these addictions. It is unrealistic to expect that one institution can reverse this trend. A quote from the 1992 Report of the Saskatchewan Métis Justice Review Committee identifies what is required, from a socio-economic perspective, in order for any of the recommendations from that report to be realized:

> "Unless dramatic changes are introduced to bring about significant improvement in the social and economic circumstances of Saskatchewan's Aboriginal people little will be accomplished by this report."

Addictions are merely a presenting symptom of the underlying historical oppression, abuse and the systemic racism and denial of Métis rights. High rates of abject poverty (surviving below the acceptable poverty line), high unemployment levels and low rates of education cause severe stress in individuals and families and it is inevitable that certain symptoms of this abuse will appear.

Métis people are vulnerable to government control over their lives. They live in a dependant state since years of government colonization and oppression has caused a welfare state. This existence is not a preferred way of life; instead it robs one of their self-respect and dignity. Intergenerational abuses beginning in residential schools have created a highly medicated society of people. Residential school experiences were traumatic for most Métis people that attended them. Strict regimental living conditions, physical, mental, emotional and sexual abuse were the norm in these schools. These students came home and repeated these same conditions with their children. Through these cycles, high numbers of people were affected adversely. The pain and suffering either from direct attendance at these schools or being raised in a home that was very strict and abusive caused trauma and pain that has not been resolved. This constant pain is intolerable for most people and therefore becoming addicted and medicating oneself on drugs and alcohol becomes a way of coping with pain.

A recent psychological symptom has been diagnosed in many Aboriginal people and that is post-traumatic stress syndrome. This disorder occurs in soldiers who have experienced death and violence first hand, which is not very much different for Aboriginal people today.

The affects these addictions have on the Métis community are devastating and far reaching. Parents with addictions who raise children not only negatively affect these children but also do not provide proper care to them. These children often end up in the child welfare system, only to grow up to repeat the same cycle, as did their parents. This vicious cycle produces generations of further pain and hopelessness. It is certainly not a condition that is preferred by those who are affected. It is a disease that has touched every Métis person in Canada today.

In recent years, the Aboriginal community has made successful advances at restoring health, awareness and treatment of addictions through various programs such as twelve step programs and local addictions assistance. This wellness also occurs in the area of life skills. Generations of family breakdown and disruption have left many people without basic life skills. Along with the addictions programs, life skills' training assists in restoring health in some communities. This training is also a large part of the treatment offered in every detoxification center in Saskatchewan.

The abuses from the past and the continued internalized colonization create a shame-based personality, susceptible to self-abusing behaviors such as drug and alcohol issues. Apart from the residential treatment aspects of addiction, Métis people find that re-integration back into the community after attending detoxification and life-skills treatment difficult because of the absence of addiction follow-up and support services. Other issues are the absence of proper facilities for those with addictions that are taken into police custody. There have been incidents where individuals have died because proper care wasn't provided.

The drug and alcohol link to the justice system happens when addicts steal to support their habit. In addition to supporting a habit, Aboriginal people get caught within the justice system by getting caught stealing to feed themselves and their habit as well. Métis youth who join gangs need to support their gang mates habits as well as their own, therefore break and enter and stealing is a common practice. A study conducted by Saskatchewan Corrections and Public Safety of all youth within correctional facilities in Saskatchewan in 1999, regarding the risk factors for ending up in jail was all those elements already mentioned such as poverty, but one that scored 80% of all youth was alcohol and drug abuses.[21]

The solution to decreasing the amount of people with addictions lies in dealing with the cause of these addictions. The socio-economic condition of Métis people has to improve. Métis people have a right to see their inherent rights affirmed through legislation: this will help build the strong foundation for the Métis Nation, the restoration to health and balance.

WE RECOMMEND THAT:

1. The Saskatchewan government commit to a long term, multi-faceted plan to tackle the depressed socio-economic conditions for the Métis Nation in Saskatchewan.
2. In partnership with First Nations, an improved community integration plan be implemented that enable those with addictions to better cope and stay alcohol and drug free.
3. In urban areas, it is recommended that facilities for those addicts in police custody be provided adequate services while being held.
4. With the increase in stronger more complex drugs being used by addicts, it is recommended that MACSI and other addiction services receive more resources to educate and prepare for such addictions.

---

[21] Government of Saskatchewan "New Directions for youth services: the Saskatchewan youth services model", by Saskatchewan Health, education and social services and justice.

CROSS-CULTURAL TRAINING

Cross-cultural training is now utilized for many government employees, police services and other public and private sector organization. It is a program designed to make others aware of Métis and where they can conform into the system. However it is an important program. Current cross-cultural programming examines Aboriginal culture, history, and ceremonies. Cross-cultural programming is geared towards building cultural awareness of Aboriginal culture to mainly non-aboriginal employees. To many people it is not taken seriously or only takes it because they must. How much will an individual learn under these circumstances?

Most cross-cultural training examines Métis tradition from a pan-aboriginal perspective, again grouping three very distinct nations into one. This does not provide an accurate view of the Métis, First Nations and Inuit people of Canada. While there have been some recent developments in this area, any Métis perspective is mainly from a First Nations perspective. Much more effort needs to be made to accurately portray Métis worldviews, values, beliefs and culture. Cross-cultural training needs to involve more than history, cultural activities, and spiritual training, as this is only part of who we are. It needs to incorporate Métis identity, where we came from, who we are, our experience, realities, and worldviews in contemporary society. It needs to impart the Métis experience and reality and provide an understanding that identity is the core of Métis existence. Cross-cultural training needs to understand and embrace Métis ways of knowing and identity to present an accurate picture of who we are today.

Cross-cultural training is an important part of embracing our communities in the effort to understand who we are as a global community. Learning is a life-long journey and cross-cultural training should be too. Changes need to be made to the way people are trained and include the ideas noted above. Fostering a better understanding of who we are may assist in combating racism and systemic discrimination when we see it. Cross cultural training needs to be more than a one-day seminar and needs to be carried out on a continuous basis. Corrections staff should take intensive cross-cultural training at orientation and on an annual basis for at least a week.

Concerns have also been raised about racism in provincial and federal correctional facilities. Cross-cultural training as discussed above will assist in addressing this issue. However, in some cases it will not be adequately addressed by cross-cultural training. The "old guard" in institutions may be resistant to change. The 1991 Linn Report recommended that:

> "Corrections administrators must be trained to identify signs of racial intolerance and remedial training programs be provided to any staff exhibiting racist attitudes and behaviours...where remedial training has no had its desired effect, appropriate disciplinary action be taken."

We support this recommendation, however, racism and discrimination is increasingly difficult to see and such policies are even more difficult to enforce. We recommend that assessment tools be developed with the Métis Nation – Saskatchewan to screen out potential racist employees. It is also recommended that Métis Family & Community Justice Services in partnership with Gabriel Dumont Institute, immediately develop a cross-cultural training packages that incorporates Métis identity, worldviews, ways of knowing, and culture for implementation in provincial and federal correctional facilities.

EMPLOYMENT EQUITY

Incarceration rates of Métis men, women and youth in Saskatchewan are unacceptable. While increasing the number of Métis employees in the corrections system is a positive step, this will not decrease the number of Métis offenders within the system. We do not want more institutions. We want fewer institutions. Primary focus should be placed on preventing contact with the correctional system and diverting from this system.

> "The problems with including the Métis in the justice system, at whatever point it may be, police officer, court worker, etc, it is the power to make decisions that make a difference. If a position is given and if and if that position does not have authority allocated in it, it is merely a token position."
>
> Denholm Presentation

Many reforms, like employment equity, are designed to fit Métis people into the current system. We do not want to fit into the system; the system needs to adapt to incorporate Métis values, beliefs and worldviews. As the Métis Nation – Saskatchewan continues to assert the right to self-government and the right to control the administration of justice; we realize this will take time to realize. As such, employment equity is a short-term goal. We would like to see Métis employment in the provincial and federal correctional facilities to be equal to the percentage of Métis offenders. We adopt the recommendation of the Linn Report of 1991, where it states:

> "Saskatchewan Corrections and the Correctional Service of Canada (CSC), in consultation with Indian and Métis organizations, immediately implement employment equity programs to achieve greater aboriginal participation at all levels. A minimum target would be the percentage of aboriginal people in Saskatchewan; the optimum, a percentage of aboriginal staff equal to the percentage of aboriginal offenders served."

Employment equity positions need to be more than correctional officers or Aboriginal liaison positions, they need to be positions of authority with decision-making opportunities. This in turn may have an impact on community development and capacity building. It is recommended that pre-employment training programs such as the Dumont Technical Institute pre-employment corrections programs be expanded and continued. However, programming should not only focus on entry-level positions. Efforts should be geared towards recruiting for upper management positions. This will infuse Métis knowledge into the correctional system, as well as building capacity by building a skill base within the Métis population.

POLICY DEVELOPMENT

As in other sections of this report, it has been said that the Métis communities do not have the resources and foundation to adequately govern and administer their own institutions and therefore their own people. Métis people are proud people, who work hard to feed their families and look after their loved ones. Poverty is the overwhelming challenge for most families and communities. For instance, recent statistics show that Aboriginal people earn 38% less per year than the non-Aboriginal population[24]. Aboriginal people average $15,700 per year compared to $25,400 [25]. It is estimated that most Métis live in urban settings and the statistics demonstrate that Aboriginal people are even poorer, earning below $10,000 per year, in the two major cities in Saskatchewan. The percentages are 51% in Saskatoon and 48% in Regina, earning below the poverty line.

Poverty and economic struggles within the Métis community are also mirrored within Métis organizations. Organizations are necessary to provide services and to advocate for the Métis in Saskatchewan. It is widely understood that a nation or society requires resources through its government to provide programs, services, information management, information analysis and political advocacy, among other things, in order to serve its community. Similar to the other government, the Métis live in a distinct society and therefore require the capabilities to establish institutions that can effectively serve its people. At present only the administration of some services have been devolved to the Saskatchewan Métis community.

The intentional erosion of existing core funding compounds the socio-economic struggle. Government continues to deny Métis their rights to the land and its resources. Presently the majority of the funding invested into Métis communities is in the form of welfare meant to keep these communities dependent on government. This money, in the form of welfare, does not meet the needs of the people. The real need is to have the capacity for Métis themselves to provide services aimed at restoring community based practices of healing and justice. This restoration is required in order to be self-governing and to become self-sufficient.

The vision for the Métis nation is to have Métis institutions in communities that have certain functions to assist in strengthening the fabric of a community. These institutions, not unlike present governments, would have the responsibility to provide proper information management, analysis, research and policy development. Those areas that are presently being administered by the Métis themselves should be eventually completely managed by the community. Merely administering a project controlled by outside government fails. It is proven time and time again that Métis lead projects obtain real goals for lasting impact. Capacity must be built into these initiatives employing more Métis. Other services that Métis communities need to recover responsibility for are the care of family matters to instill and pass on values, deliver justice, pass on Elders teachings, and restore balance to people and the community.

Traditionally the Métis operated under their own governments, defined their own laws and lived by their own policies. Within the community there were assigned roles for each responsibility. These institutions operated in an efficient, timely manner, not unlike those structures in place today. The difference today is that the Métis Nation is critically under funded. Building a foundation for self-government requires a policy and planning arm that will provide knowledge and support to the leadership and people of the nation.

In the quest to realize true self-government, the Métis nation has progressively built institutions that reflect both the aspirations and direction from the membership in Saskatchewan. The Métis Nation - Saskatchewan has twelve Affiliates that deliver programs and services such Métis Employment and Training Saskatchewan, Gabriel Dumont Institute, Dumont Technical Institute, Métis Addictions Council of Saskatchewan, Métis Family and Community Justice, SaskNative Development Corporation and the Clarence Campeau Development Fund. These institutions are a good example of structures that are required in order to continue building upon and creating capacity enabling the MNS to be fully self-governing. The need for capacity development in policy exists in other areas such as environment and resources and gaming and health, to name a few.

[24] Statistics Canada. (2003). *2001 Census: Analysis Series: Aboriginal peoples and Canada: A demographic profile.* Ministry of Industry

[25] Ibid

The ability to create institutions that research, analyze, and create long term planning and strategic processes is essential to develop policy and positions that support Métis specific needs. The MNS requires the resources to build a policy arm within its political and program offices and institutions, such as Child and Family services and justice.

This policy arm, not unlike the Privy Council Office of the federal government, will have the capacity to retain Métis researchers, lawyers, writers, planners, policy makers and legislators to analyze policies and laws that directly impact Métis rights, resources and institutions. It would be an extension to the Tripartite Unit that exists at the MNS consisting of two individuals and would further allow the MNS to be directly involved with government on a partnering basis when analyzing, understanding and reacting to new policies and legislation. Building a policy and planning arm for the subject areas within the nation is essential to the long-term vision of being fully self-governing.

Currently existing programs barely have enough resources to fulfill the delivery requirements of their mandates. Rarely is there enough time and money left over to plan, prioritize, or create a strategic plan or analyze government documents. This quandary places undue stress on workers and leads to high staff turnover and staff burnout. It also does not allow for sufficient planning and strategic thinking. Effective communication is lacking which thwarts most effort.

WE RECOMMEND THAT:

1. Negotiations occur with the MNS and the Saskatchewan government to adequately fund a permanent policy department for those programs that do not have this ability such as the MFCJS.
2. As part of the above development, it is recommended that adequate resources be available to enable the MNS and MFCJS to come together as an organization to draft goals and develop an implementation plan that will support existing and new programming within the MFCJS.
3. As part of the above, it is recommended that Métis Employment and Training Saskatchewan Inc. receive adequate funding to train and prepare new policy makers for this new policy development arm of MFCJS.

FETAL ALCOHOL SYNDROME/FETAL ALCOHOL EFFECTS

Present solutions to protect children, through the Saskatchewan Child and Family Services Act do not necessarily help the Métis community strengthen its care of children. It sometimes creates a bigger problem by taking the responsibility of parenting and caring for children away from parents and family and into someone else's hands. This prolongs the colonization affect Métis people continue to live with. Since reforms to the Child Welfare system may take some time, resources to establish institutions are needed to begin building capacity, thereby enabling Métis to look after their own children. A Child and Family Agency operated and controlled by the Métis is the only option.

There has been a sharp increase in the number of children being born with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) within the Métis community. Today there is increased awareness of the syndrome but still little resources are available to assist families in coping. Alcohol use within the Métis community continues to be one of the biggest problems concerning families and it has the most detrimental affect on children, both living and in utero. The experts note that one drink of alcohol by the mother while carrying a child can cause FAS. This is in stark contrast to the information that mothers received in the 40's and 50's where they were told they could drink moderately. There is no doubt that this is a preventable disease being passed on to children, which they carry as a legacy throughout their whole lives.

The affects of this syndrome are enormous to the community. It causes brain damage in children causing them to have inconsistent mood swings. As well, children are developmentally and mentally stunted, among other affects. Many of these children end up in the Child Welfare world, living in foster homes because of their developmental difficulties. Many children are not diagnosed and therefore suffer from not being properly treated.

Diagnosing children has its difficulties. Many Métis families do not want their children to be branded. In some communities, once a child is given a psychological label, it becomes a burden to that child and defines the limitations of the child's world. Only in the last five years have Aboriginal communities in Saskatchewan received some assistance in dealing with this syndrome. In some areas, this assistance is non-existent. Awareness and education is one of the most important steps that families and communities require to become aware of this disorder. Specialized services and diagnosis are other pieces of the puzzle for Métis communities in order to deal with this devastating disorder.

Not enough has been done to help families cope with this syndrome. Because it is a preventable disease, Métis communities need to be involved in prevention. Resources are required to do this. The affects of drinking while pregnant need to be communicated at every level of the Métis community, from schools to liquor stores and bars. Families and communities need information on how to cope with FAS children and assistance in providing safe, appropriate methods of caring for FAS children[26].

One story about two Aboriginal parents raising seven children, four with FAS speaks directly to how the whole family is affected. The parents have to avoid over-stimulating activities in many public places because FAS children cannot handle some of these environments. The mother says:

> "The affected children suffer from many of the typical symptoms. Kim (the mother) describes two of the younger kids as being very impulsive, easily led and unable to see danger, they have a hard time dealing with stimulation in their environments, as Kim says, They can't handle recess (at school)- there's 400 kids on the playground…not surprisingly, problems often arise at school"[27]

The resources and services required to stop this syndrome and to provide services for those in need to adequately live with it must be designed and delivered by the Métis communities themselves, not from outside government and or organizations. Métis communities need to decide the best way to provide prevention and treatment of their community members. These communities need experts to assist in their understanding, but it is up to communities to drive this program. With the right help and resources Métis communities can proceed with confidence that this syndrome can be stopped and those affected live a normal life.

---

[26] Aboriginal Nurses Association of Canada. (1997). *It takes a Community - a resource manual for community-based prevention of FAS and FAE*. Health Canada. It takes a community National Working Group. Minster of Public Works Government Services Canada.

[27] Ontario Federation of Indian. (2002). *Aboriginal approached to Fetal Alcohol Syndrome/Effects*. (pp. 15).

The child welfare system must be improved to help Métis families. Restoration of community and family should be the focus of child welfare. Initial steps must focus on improving collaboration of services and increase resources. The development of models focused on further control over Métis children, the devolution of programs to the nation from the government, a set of principles to guide the development of Métis Child and Family services in Saskatchewan, as set out by the MFCJS are imperative. The vision includes the following elements.

1. Be Rights-based;
2. Be Métis-specific;
3. Be Designed and Implemented Province-wide;
4. Be Healing-Focused;
5. Be Holistic;
6. Be Intergenerational;
7. Be Based Upon an Ethic of Caring and Mutual Respect; and will
8. Respect Diversity within the Métis Nation in Saskatchewan.

THE MÉTIS FAMILY, THE FOUNDATION OF THE NATION

> "...[H]ow we treat our families, you know, there's justice within the family unit. And I believe that's where it starts. I strongly believe that's where it starts. If we can raise our families with strong values and beliefs, our families can go on to live up to those values and move on into the community and so on *into the rest of society* and the world. That's where ownership starts, whether people realize it or not..."
>
> Beauval Community Dialogue Participant

Inter- connected relationships to the land, the earth, and to one another are the foundation of Métis ways of knowing and understanding the world. This inter-connectedness and inter-dependence is enduring and has helped in the survival of Aboriginal people in Saskatchewan. In the past, strong Métis societies placed high value on their children, women and family. There was great respect for the family unit and much was done to maintain it. The roles of mother, father, aunt, uncle and grandparents were clear and everyone had a role in raising children. The care and support of children was a high priority in Métis societies of the past.

Family, and the interconnectedness of the relationships within a grouping constitute the foundation of Aboriginal life. It is from family that Métis people learn about values, morals, spirituality and life ways. One depends on family not only for the comfort of good relations but for the caring of the old, the needy and sharing of ones bounty with ones family. Ones' relationships or kinship within this grouping is crucial to survival because it is an inter-dependent partnership, based on values and standards of caring for ones large extended family. As well, caring for elders is vital to maintaining the connection to family and the kinship of relationships. During MFCJS visits to Métis communities in 2003 most discussions centered on problems with families, children and youth. Most of the people that spoke had grave concerns for the children and youth of the community. These comments, highlights the comments that were heard:

> "The justice system has ripped apart Métis families since it's inception. The legacy of this issue continues to be one of the contributing factors to the decimation of the Métis value system and one of the reasons for the high number of Métis in conflict with the law."
>
> WR1A Presentation to the Commission

The strong family institution was present before government imposed colonization onto Aboriginal people. The fragmentation of family systems and supports has taken a toll on the ability of Métis families to cope in today's society. Kinship and extended family networks are still present today, albeit somewhat fragmented. This system is critically needed in order for Métis society to become strong and self-sufficient, once again. Studies have shown that those Aboriginal people who have assimilated the most into mainstream society have suffered from the system the most[28]. This assimilation has caused a breakdown in the family unit. This is mostly due to moving away from family groupings and communities and loss of teachings about roles and responsibilities to the clan, family and tribe.

> "Consideration of the role Métis women have in the family unit should be instrumental in determining the decisions that affect areas such as Youth and the Law, Family Violence, Prevention and Intervention, Legal Rights of Women and Children, and Child Protection laws. Since women are the primary caregivers of children in most cases, they must be heard, and recommendations made by the MWS should play a vital role in changes made to government policy, legislation relating to Family and Child Welfare, as well as all areas of family justice issues."
>
> Métis Women of Saskatchewan Inc.

---

[28] Adelberg E, Currie C (Ed) La Prairie. (1987) Native women and crime in Canada: A theoretical model. In the too few to count: *Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers

To support and repair existing problems within the family such as absent parents, and the abuse and neglect of children, the existing protection system has to change to allow for Aboriginal traditions and life ways to return and to restore these ways. Present solutions to protect children, through the Saskatchewan Child and Family Services Act, do not help the Métis community strengthen its care of children. It more often creates bigger problems by taking the responsibility of parenting and caring for children away from parents and family and into someone else's hands. This perpetuates the colonization affects Métis people continue to live with. Since reforms to the Child Welfare system may take some time, resources to establish institutions are needed to begin building capacity, thereby enabling Métis to look after their own children. A Child and Family Agency operated and controlled by the Métis is the only option.

The child welfare system needs to be improved in the way it works to help Métis families. Restoration of community and family should be the focus of child welfare. Initial steps towards improved collaboration of services and increased resources are essential.

In reference to the development of models toward further control over Métis children and the devolution of programs to the nation from the government, a set of principles will guide the development of Métis Child and Family services in Saskatchewan, as set out by the MFCJS. The vision includes the following elements:

- To ensure that every Métis child is brought up in a secure and healthy environment, including the physical, spiritual, mental, social and emotional elements of human development.
- To ensure that every Métis child grows up to understand and appreciate their own heritage, history, culture and language.
- To regain recognition of Métis authority for Métis child and family wellness by returning control to the families and communities within the Métis Nation in Saskatchewan.
- To establish a framework upon which these principles can be acted upon, within the MNS authority.

The development toward an institution that serves Métis children will be based on rights of the child, as spelled out in international documents. A process of gradual devolution of existing Child and Family government programs, back to the Métis community, is the solution to the present problems in the system of caring for children. This process can be set out in a framework that seeks to build governance and capacity. The Métis Family & Community Justice Services Memorandum of Understanding signed in 1998, is a positive initial step toward eventual Métis control in this area.

This development of implementation models for Métis Child and Family Services will incorporate a Métis specific province wide rights and healing based model that respects diversity and incorporates respect and caring. It will be holistic in scope and focused on healing and the intergenerational needs of the Métis nation.

MFCJS has a mandate to design, develop and implement services at the regional level for Métis children in Saskatchewan. Presently, MFCJS assists with community development and helps implement existing services from the Saskatchewan government. MFCJS provides the following services: the Aboriginal Court Worker Program, research and planning, and provides advocacy and information for clients caught within the justice system. MFCJS has plans to draft a Métis Child and Family Services Act to be presented for adoption by the Métis Nation Legislative Assembly.

WE RECOMMEND THAT:

1. The Province of Saskatchewan immediately mandate a Métis Child and Family Services agency in Saskatchewan under the Métis Nation – Saskatchewan and under the direction of the Minister of Métis Family & Community Justice Services (MFCJS).

2. High-risk Métis children receive assistance at an early age therefore prevention and intervention services should be available at an early age.

3. Métis children involved in the child welfare system should be cared for in Métis homes.

4. The government of Saskatchewan commit to a process that works on a Métis definition of kinship care and puts it into policy and law, thereby recognizing it as a common practice within the child welfare system.

5. Inter-agency collaboration is recommended with MNS, to develop community justice approaches for youth and children. This includes all government departments such as Policing Services, Social Services, Corrections and Public Safety, HRDC, Health, Saskatchewan Justice, and community - based organizations.

6. Resources are made available for a Métis Elders gathering to examine Métis traditional values and culture to further guide future policy and programming for Métis Child and Family programs.

7. Proposals be developed and forwarded to the federal and provincial governments through the Métis Nation - Saskatchewan Tripartite process for funding of long-term implementation strategies, programs and services related to Métis Child and Family Services.

8. The Saskatchewan government immediately pass legislation devolving child and family services to the Métis Nation.

9. A committee of senior officials be created consisting of the Department of Community Resources and Employment, Government Relations and Learning in Saskatchewan, Health Canada, Secretary of State Responsible for Children and Youth, Senate of Canada Standing Committee on the Child, and Métis Nation officials representing Métis Nation Saskatchewan Affiliates and Institutions, explore the Métis Child and Family Services Policy and its potential implementation steps and requirements.

10. MFCJS, Métis Employment and Training of Saskatchewan Inc, the Gabriel Dumont Institute, and other Métis Nation Saskatchewan Affiliates, negotiate partnership arrangements with the Department of Social Services to undertake joint initiatives in training and education to increase the number of Métis professionals in the area of Métis Child and Family Services.

11. We recommend the inclusion of Métis women and Elders in policies relating to the Métis Family. Representation at the provincial and national boards relating to matters related to but not limited to: Métis family, youth and the law, Family violence, Child and Family Services, etc.

MÉTIS YOUTH IN THE JUSTICE SYSTEM

> "We've found over the years that our kids, a lot of our kids are getting into trouble, either they're bored because there's not a lot of stuff in the community for young people to do. If you ever drive down Main Street in the middle of the night or like after 8:30, all the kids are doing is hanging around down town, that's all they do…they have no place else to go, they have nothing to do. So they get bored and they start getting themselves into trouble."
>
> Fort Qu'Appelle Community Dialogue Participant

Further to the discussion on family and children previously, another factor in youth incarceration is the breakdown of Métis family systems, which should provide strong values and a healthy foundation. Métis youth are the most affected among the community by the lack of family supports. Métis have lost a substantial impact of family teachings and youth feel they have no place in society. They also feel under valued both by mainstream society and their own. This despair leads them into risky situations and behavior. As youth is a natural experimental time, young people end up challenging the status quo sometimes leading risky lives.

In the last ten years, youth are turning to more serious criminal offences, harder drugs and riskier life styles. One greatest concern is gang development. Gangs are becoming more of a life style that large numbers of disenfranchised youth are turning to, taking the place of family. Gangs provide belonging and protection, although this is determined false after one becomes a member. Youth believe that gangs are the answer to the hostile world on the street, but soon realize that being part of a gang has many more problems and risks than experienced prior to joining. Being part of a gang is not always a free choice for some kids. For most, it is forced upon them and becomes a life long sentence - there is no escaping membership in gangs. Once a person joins it becomes almost impossible to get out.

Aboriginal youth, because they are the most visible on the street and feel the affects of societal stereotypes, have more altercations with the law, experience excessive force by police and experience harsh penalties when charges are laid. Aboriginal youth are the most vulnerable against the colonizing system in Canada and the statistics bare this out. Of the total number of youth in the justice system, 75% are Aboriginal youth[29]. This presents a bleak picture for Métis youth in Saskatchewan.

Compounded with the vulnerable situation of Métis youth, recent studies of the publics' perception of young offenders have shown there is a greater demand for harsher penalties for youth that break the law. In one study conducted in Saskatchewan in 1999, the general public believed that government was not doing enough to punish youth [30]. Public perception is surely what government will act on in developing programs for youth that are involved in the justice system.

Aboriginal youth do not fair well in society due to a number of factors as already mentioned. Education attainment, which is low for Métis youth, is often used as an indicator of greater earning opportunity. In addition, more and more aboriginal people find that the only way out of the pain is to commit suicide. The condition of Métis youth in the justice system is reprehensible and drastic measures are required.

Aboriginal children are the fastest growing population in Saskatchewan and across the country, constituting a 1/3 of the Aboriginal population. Even though the overall Aboriginal population in Canada accounts for 3.3%, Aboriginal children represent 5.6% in their age group in Canadian society[31]. In just a few years this age group will be teenagers, facing all the challenges of that age group before them. Hopefully this group of Aboriginal youth will eventually force the required changes to the system, due to their size and bargaining power. A similar occurrence has been the post World War II baby boom generation that caused a stark rise in the North American population. Consequently they became influential due to their economic strength and have set social trends and financial standards.

---

[29] Statistics Canada. (2003). *2001 Census: Analysis Series: Aboriginal peoples and Canada: A demographic profile.* Ministry of Industry.

[30] Government of Saskatchewan. *New Directions for Youth Services: The Saskatchewan Youth Services Model.* Saskatchewan Health, Education, Social Services and Justice.

[31] Ibid

From an optimistic perspective, such a large Aboriginal youth population can result in a very strong movement toward personal health, higher education attainment levels, higher employment rates and lower poverty levels. All of this is contingent upon the will of the adults to put the foundation in place enabling youth, as an economic and political force, to rise above present day problems that have plagued those in earlier generations.

> "We need to get to kids before they are fourteen or fifteen, we need to get them at ten or something. We need to develop a passion for them, to spend time with them. We need someone to spend time with him or her. They need more opportunities and want to do something instead of drinking and drugs. When they are older they will have more respect and know right from wrong."
>
> Ille ala Crosse Community Dialogue, Youth Participant

During the consultations with Métis communities led by MFCJS, Métis youth made many useful comments and expressed their appreciation for a number of programs that have helped them, such as: Operation TARGET, Youth circles diversion program, the Fine Option Program and the White Buffalo Youth Lodge in Saskatoon, among many others. Even though the situation for youth is harsh, they inevitably find strength and appreciation for small miracles, such as the programs listed above.

> "We also need the commitment from the agencies in our community to help out the youth offenders or the victims. I think the youth are becoming delinquent because they have become de-linked from the community. They are really very under-represented. They are not being heard or seen. There is too much happening here for the adults. Nothing is happening for the youth."
>
> Cumberland House Community Dialogue Participant

To reverse the destructive path that youth find themselves, Métis communities need the support to make change and to assist youth in discovering their voice and place within society.

WE RECOMMEND THAT:

1. More resources are provided to deliver more cultural camps that teach Métis kids their culture and help prevent violence and choosing risky life styles.
2. More effort is put into building partnership programs between Métis youth and police so that positive relationships can be fostered and role models created.
3. It is recommend that within existing youth corrections facilities in Saskatchewan there be more cultural programs offered and more contact with elders.
4. A greater effort is made to keep youth busy and off the streets, such as more recreational programs and self-empowerment opportunities.
5. When solutions are created, families and aboriginal governing structures are part of the equation.
6. Parents are held accountable for better parenting. Therefore the laws and policies need to change that places more responsibility in this arena.
7. Development, support and nurturing of the Youth Advisory/Justice Councils be provided on an ongoing and consistent basis.
8. Métis youth are provided with opportunities to provide input into policies that impact them. i.e. Métis Youth Council involvement at the Provincial Métis Council.

9. Métis youth have opportunities to actively participate on government committees that are making changes to law and government policy that directly impact on youth.

10. Resources are provided in order for the MNS educational institutions to create and offer Michif language programs both in schools and in post secondary institutions in Saskatchewan.

11. A Youth Center modeled after the one in Prince Albert be created in those Métis communities where there is the greatest need. This concept will provide youth with confidence and educational skills as well as provide activity and a belief in oneself that empowers youth to find their voice and become strong, active members of a society.

12. Youth need an opportunity to establish a connection with Elders. It is recommended that a program for Métis youth be instituted both in schools, and in the community that affords youth more access and understanding of how a Métis elder can assist them in the challenges of every day life.

13. In addition to the above, it is recommended that a regular process for Métis youth and Elders to come together to share, learn, heal and reconnect, be provided either through summer gatherings, winter conferences, etc.

14. As part of the need for Métis youth and elders to reconnect more often, it is recommended that a permanent program be implemented across Saskatchewan that is designed for Elder's to mentor Métis youth. This would be geared toward re-establishing that link between elders and youth, tradition, culture and contemporary issues.

15. There is present need for stronger Elder involvement.in all current Métis youth programming and committees in the form of creating a permanent seat for Elders as part of youth processes in the Métis communities in Saskatchewan.

16. The Saskatchewan government approves resources for the MCFJS to establish positions for eight more youth justice workers, throughout Saskatchewan.

YOUNG OFFENDERS

Métis youth face numerous challenges in their quest to survive and develop into adults. Far too many youth grow up in environments that do not foster and build on their healthy identity and self-esteem. Even if a youth is lucky enough to receive this from their home environment, their peers and the hostile environment on the street will inevitably push them into a life of offending and violating laws.

The factors that lead Métis youth to a life of crime are numerous. Much of these factors are laid out for them before they are born: colonization, oppressive government policies and laws, suppressed self-determination and the residential school legacy, are just a few factors. A number of studies have been conducted that address the risk factors in getting involved with the justice system. Some of those risk factors are: coming from a family that lives in poverty, unhealthy family life, drug and alcohol addictions and low education attainment.

Being at a stage in life where youth look for opportunities to challenge boundaries and express themselves in various ways, naturally it could lead them into the hands of the law. Youth are very vulnerable because they don't have a lot of choices, so they find themselves on the street vulnerable to police who will prey on them, as noted by a number of youth during the MFCJS consultations in 2003:

> "The RCMP doesn't treat us with respect and often looks upon us until we sign a statement admitting to the charge we don't understand. It is common for us to be held at the station without parents being notified and subjected to scare tactics and threats of being locked up for a long time if we don't cooperate. Our rights are not explained to us and often time innocent until proven guilty is just a pipe dream in our Native communities. If we are expected to respect the law then it must be returned, the law must respect the youth and their needs."
>
> Youth Participant at Beauval Community Dialogue

As noted in the previous section, incarceration rates for Aboriginal youth in Saskatchewan are the highest in the country. It has become common practice to assume that youth will end up in a correctional center at some time during their teenage life and they are so easily labeled "young offenders". This inevitably becomes a self-fulfilling prophecy when youth get branded with this label, not only from the non-Aboriginal society but also from their community.

> "I would like to see something done for the youth also like a healing facility so they don't have to be taken out of their community where they could learn traditional values, traditional ways instead of being sent out of the community."
>
> Cumberland House Community Dialogue Participant

In order for Métis youth to find alternatives to the correctional system, Métis society needs to change and governments need to help. Family and children are the most important aspects of any Métis community. Not enough long-term efforts are being expended into restoring the foundation for youth to become healthy and stable, staying out of the criminal justice system.

WE RECOMMEND THAT:

1. Funding for Youth Justice Workers be provided to Métis communities to liaise between young offenders, the courts, correctional facilities, police and family.
2. More resources are provided for youth and families at high risk. While in the justice system, this should also include improvements in case management of the inter-agencies that work with youth in trouble since this will cut down on multi-agency, stove piping approaches presently being used. As part of these changes all agencies involved need to begin creating long term wellness plans for youth.
3. There is development of open - custody facilities for youth and Métis healing facilities for Métis youth with a focus on Métis culture, values and beliefs.
4. Closed custody facilities should be reduced to a minimum and reserved for youth that pose a serious threat to their communities and themselves. Programming in such facilities should be based on restorative justice and holistic healing principles. A component needs to be developed for intensive family counseling and healing. Families should be heavily involved in such facilities.
5. Development of programming and facilities to deal with youth who should not be involved in the justice system such as FAS/FAE, mental health, etc.

YOUTH RE-INTEGRATION

> "Youth have nowhere to go after [being released] from Dojack. They are kicked out onto the street with nowhere to go, the lack of youth homes or halfway houses is a real concern."
>
> Elder, Métis Elders Forum

With the large Aboriginal youth population in the correctional system and the need for Métis communities to be able to take care of their own, a committed consistent process needs to be established that will create more resources in communities to enable more diversion of Aboriginal youth away from institutions and instill strong values into youth about healthy behavior and attitudes.

As has been noted in other sections, Métis communities have a long-standing desire to take care of their own. This cannot happen when existing resources (both human and financial) are stretched and overused. A commitment is required to strengthen Métis capacity to deal with problems in their own communities. This must take on the form of building institutions that support more programming and addresses needs in a holistic manner, reflecting Métis culture and lifestyles.

It is common knowledge that much of the gang recruitment occurs in youth correctional facilities. In order to stay alive and be part of the crowd, youth will willingly choose or get recruited into a gang. Due to the distorted media coverage of gangs, youth carry a positive image of being part of a gang life and seldom receive the news about the reality of gang life. This information is found later when it becomes too late to make a choice whether to stay or to leave a gang. Many of the Aboriginal youth that get released from jail are part of gangs and therefore it becomes difficult to prepare a plan for youth to be successfully re-integrated into his/her community once again. Many of these youth end up in urban settings where the lure of gang money and its accompanying lifestyle are hard to refuse and walk away from.

Keeping youth away from a life of crime and successfully keeping them in a community after being released from jail is a huge challenge.

Like so many other issues faced by the Aboriginal community in Saskatchewan, the answer and solutions require a comprehensive, multi-program, multi-stakeholder effort to come together and look at the solutions from a holistic perspective taking into account a youth's mental, spiritual, physical and emotional needs and having the resources address those four bodies. Solutions must be multi-year, long-term strategies that include youth and families as part of the solution.

WE RECOMMEND THAT:

1. A stronger commitment of time and resources is made to youth reintegration because youth are not receiving enough assistance upon release from youth detention facilities.
2. There be development of youth crisis centers in urban areas, which is desperately needed since the Métis population is highly urbanized.
3. The creation of justice liaison workers within schools in Métis communities in Saskatchewan is recommended. Their role would be to raise awareness of the negative affect of getting involved with the law provide education on the legal system and be a liaison with families on justice issues.
4. A major commitment and investment is required for Métis youth. This can only be realized by applying government will and the establishment of equal partnerships with the Métis community, therefore it is recommended that a Bill of Youth Rights be proclaimed with accompanying resources in order to implement these rights for youth.

5. A stay in school program is created incorporating Métis values and beliefs, in partnership with Gabriel Dumont Institute.

6. Since education is the key to freedom and self-empowerment, more is required for Métis youth to receive higher education levels. It is recommended that there be more funding for Métis youth to be educated and attain a higher education.

7. Self-sufficiency requires self-esteem and financial resources; therefore it is recommended that more effort be put into creating employment for Métis youth. This includes more part time and more opportunities in the north.

YOUTH ALCOHOL AND DRUG ABUSE

Youth addiction to drugs and alcohol is merely a symptom of larger causes born by a nation that has suffered from historical wrongs and current discrimination and oppression. Being under the constant influence of mind-altering substances are methods used by an addict to suppress the pain and anguish of problems that they are not able to deal with. The burdens of poverty, systemic racism and overall rejection of ones history and rights, places Métis people in a no win situation, eventually crushing ones spirit.

The burdens and inability to withstand the issues of every day living, Aboriginal people turn to drugs and alcohol to dull the pain. Like adults, Métis youth face similar challenges, yet their issues are sometimes compounded because youth do not always have a voice and a rightful place in society. This addiction often leads them into a life of prostitution or gang life in order to support their habit.

Addiction is a disease, and one that should be treated as such. More facilities in corrections and holding places are required for youth when they are withdrawing from drugs and alcohol, since unsupervised withdrawal may cause death. With the steady increase in harder drugs over the past decade, Métis youth need specialized assistance to tackle their addictions. Many of these drugs are easily available and particularly accessible in youth facilities.

Since 1969, the Métis Nation – Saskatchewan (MNS) has had an extensive history of providing quality addictions treatment to the Aboriginal community in Saskatchewan. The Métis Addictions Council of Saskatchewan Inc has facilities in all the major cities in Saskatchewan. The services and clientele have changed over the last thirty years, where the drug of choice used to be mainly alcohol. Today drugs in all forms are being abused. As well, there are more and more young people addicted to drugs and alcohol compared with those in the past.

Even though the numbers of youth that are struggling with addictions have skyrocketed, there are no facilities in Saskatchewan for these youth. When treatment is offered, youth are sent outside the province. This is unacceptable. Out of necessity, youth have had to attend adult facilities and this raises more problems than solutions, as adult solutions do not always work for youth problems.

WE RECOMMEND THAT:

1. Youth detox and treatment centers are developed across Saskatchewan in consultation with MACSI.
2. A Métis-specific youth alcohol and drug awareness campaign be promoted in Saskatchewan, either as a stand alone project or as part of the Canadian Youth and Heritage media campaign on the dangers of alcohol and drug abuse.
3. Existing drug and alcohol programming be geared towards Métis youth that focuses on early intervention and prevention of alcohol and drug abuse.

YOUTH GANGS

The fragmentation of family supports and kinship systems within the Métis community due to past injustices have affected children and youth the most. Children from broken families have a greater risk of being involved in the life on the street, as a caring support system is not there to protect and guide them. There are many youths who have stable homes, but there is little being offered to aboriginal youth. "Hanging out" is the only recreation.

In Saskatchewan there has been a drastic increase in youth involvement in gangs. Research and knowledge in this area is in its infancy, therefore it is difficult to accurately describe the problem but equally challenging to find solutions and alternatives to gang life.

Based on a newly released report on gangs by the FSIN Alter-Natives to Non-Violence Initiative (ANNVI), the creation of gangs has been "characterized as a spontaneous youth movement"[32]

Gang creation can be attributed to the historical residential school experiences as well as the continued affects of racism and rejection from early work experiences and positive school experiences. The constant stress and life of at-risk youth makes them vulnerable to violence, abuse and inequality among their people and maltreatment from other sources. Due to the poor or absent choices for Aboriginal youth in most Saskatchewan communities, the attraction to gangs is a strong force that provides resources and status that would otherwise be absent.

> "Gangs are good for people who have nobody to run to, like if they have no family, no support. They're good for people who want to live on the streets, want something that's not there. "
>
> Kilburn Hall Youth Dialogue

During the development of the FSIN ANNVI Report, youth were asked what would have stopped them from joining a gang. Most responded saying all of the usual things that any youth needs: security, something to do, recreation, money, choices and family support. Like other social challenges for youth, gangs are merely a symptom of larger issues within the Aboriginal community. These issues are a direct cause as to why kids are attracted to gang life style. Problems in the home draw children away from their families.

> "If you're in a gang, you can't leave…young have to be carried out in a coffin. You can't leave unless you want to get killed. I have to live with that for the rest of my life, there's no way I can get out."
>
> Kilburn Hall Youth Dialogue

Any development in this area must consider the safety of Métis youth, first and foremost. Labeling youth as gang members is used much too often and is a dangerous label to place on a child. In searching for answers to this challenge it becomes clear that once again, it cannot be a stovepipe typical government solution. Rather, it must be a comprehensive, multi-dimensional solution. It must involve all those that have a direct investment in children, including the Métis families and youth themselves.

---

[32] Federation of Saskatchewan Indian Nations. (2003). *FSIN Alternative to Non-Violence Gang Initiative.* (pp. 45).

WE RECOMMEND THAT:

1. A youth strategy is developed in partnership with other Aboriginal groups and government to develop a long term-strategic plan that is comprehensive to address and reverse the rise in youth gang membership in Saskatchewan.
2. The MNS receive funding from both levels of government to deal with issues properly by conducting community discussions and gathering research. This will be in a partnership with other groups to develop programs preventing youth from joining gangs, to help those in gangs, and to support families to cope.
3. The solutions have to be long term with a commitment to tackle all the socio-economic challenges in the Métis community, particularly around strengthening family and protecting youth.

JUSTICE EDUCATION

> "Many people do not understand their rights or have a limited understanding of their legal rights. Most Aboriginal people enter guilty pleas because they don't understand..."
>
> Métis Elders Forum

> "Have law/justice classes within the grade 9 –12 curriculum mandatory....develop youth friendly reading material on the law and the justice system."
>
> Métis Youth Council

Like Métis adults, youth need access to information about the justice system. Many youths have dropped out of the education system and therefore may not understand the written word as well as others. Even if a youth does complete school, there is little access to education about their rights and knowledge about the legal system. There is a dire need for Métis youth to have more information about their human and civil rights in relations to a courtroom, with lawyers and in correctional institutions.

WE RECOMMEND THAT:

1. Justice education begins in kindergarten and carry on until grade twelve which should include: youth rights and workshops outlining responsibilities and consequences of involvement in the criminal justice system.
2. Although this education should begin in kindergarten, when a child reaches the age of adolescence they require access to legal education material that is youth friendly and draws appropriate interest.
3. Although it is often seen as a cliché, it is recommended that governments make the needs of youth a priority.

MÉTIS WOMEN IN THE JUSTICE SYSTEM

> "Most of the legislation, regulation, policies and procedures related justice-based programming is created by non-Aboriginal[s]. In general, there has been little consultation with Métis women. Métis women involved in the justice system often lack information about their rights and face cultural biases that can lead to incarceration and the loss of custody of our children. In addition to changes in the legal system, improved relations between Métis communities and child welfare services are needed."
>
> Métis Women of Saskatchewan Inc.

Métis women, like youth, are very vulnerable to the negative affects of societal pressures. Métis women are doubly discriminated against. They are first discriminated because they are women and secondly because they are Métis. This is twice the exercise of intolerance by the non-Aboriginal society. This is compounded as many Métis women are poor, another factor of stress and intolerance by society. The description of Métis women in Saskatchewan is one of a society based on struggle but also of great strength.

Women who become involved in the justice system are not there for the reasons that the general public believes. Aboriginal women in Saskatchewan are most often single mothers living below the poverty line in urban communities. Most have dropped out of the employment picture (especially if they have children under six years of age) and struggle to make ends meet. These women have high risk factors of being abused by partners or by society's institutions.

Historically Métis women played a central role in society. Aboriginal women held central roles within the family and participated in a consensual decision making process within their communities. Their voices were heard and respected, unlike today in many cases. All of this changed when government began imposing their laws and values on to the Métis community. European culture was one where women were likened to farm animals to be owned with their views suppressed.

Over time the Aboriginal community was victim to ways of colonizers as well as the practices of assimilation. According to one Aboriginal female writer, she notes (Paula Gunn Allen):

> "The colonizers revisions of our lives, values, and histories have devastated us at the most critical level of all – that of our own minds, our own sense of who we are."[13]

Eventually Aboriginal men took on this perspective of Aboriginal women as well. Residential schools also introduced the practices of punishment and abuse to Métis communities and there began the cycle of abuse inflicted onto women and children that remains in the Métis community today. In the Manitoba AJI (1992:479) Emma LaRoche notes that Aboriginal women have been portrayed in a certain way through history:

> The portrayal of the squaw is one of the most degraded, most despised and most dehumanized anywhere in the world. The squaw is the female counterpart to the Indian male savage, as such she has no human face, she is lustful, immoral, unfeeling and dirty. Such grotesque dehumanization has rendered all native women and girls vulnerable to gross physical, psychological and sexual violence...I believe that there is a direct relationship between those horrible racist/sexist stereotypes and violence against Native women and girls.

Violence and female oppression within both mainstream society and Métis society have reached epidemic levels. In fact, the majority of Aboriginal men in prisons are there because of family violence. Contributing factors are due to both historical causes as well as present day media images. Racism and sexist stereotypes not only hurt Aboriginal women and their sense of self-esteem it propagates and encourages abuse. Media has shown Aboriginal men throughout history as bloodthirsty, treating women badly, when in fact many cultures consider abuse of women and children as violating sacred laws.

---

[13] Paula Gunn Allen, Sacred Hoop: *Restoring the Feminine to Native American Traditions*, Boston: Beacon Press, 1986, page 45.

A study by the Ontario Native Women's Society demonstrates that a majority of Aboriginal women are abused by a spouse, a family member, or someone they know. It shows that eight out of ten Aboriginal women are abused[14]. One sign of this abuse is the amount of Aboriginal women using shelters where approximately 57% of all women are Aboriginal women. Due to the mistrust of the justice system by Métis women, violence against them is often not reported. This is due to many reasons such as the fear of harassment by community and family, as well as feelings of shame, fear of isolation and lack of support systems. Aboriginal women essentially carry the heaviest burden within their communities and it is said that one can tell when a community is healthy, it is when the women and children are healthy and stable.

As with Aboriginal youth and men, poverty is directly correlated to being involved with the law, as well as low education and health levels. Aboriginal women enter the justice system as victims either from family violence or attempts to feed their families. To a lesser degree, prostitution and alcohol and drug abuse are other causes of involvement in the justice system. Statistics Canada show that an average Aboriginal household (which is often headed by a single parent female) survives on an average income of $15,700 per year compared with $25,400 for non-Aboriginals, which is a 38% difference in yearly income levels.[15] In urban settings the poverty levels are even higher and yet this is where the majority of Aboriginal people live. Women go to urban centers to escape family or community problems whereas men go there to work[16].

Risk factors for Aboriginal women getting involved within the criminal justice system are numerous. Poverty, as noted above, is the biggest factor. According to a 1993 Saskatchewan CCJS study of police reported crime in Regina, Saskatoon and Calgary, it found that Aboriginal women in both Saskatchewan's largest cities ranges from 27% - 34%, compared to 18%-23% for the non-Aboriginal females. Like Aboriginal men and youth, historical factors of colonization impact on their lives, as well as present day systemic racism, oppression and abject living conditions. Life in and out of prison can be detrimental for Métis Women. A quote from an Aboriginal woman in the Kingston Penitentiary tells it all:

> We are born to into and spend our life facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence.

Women have particular needs while in correctional facilities. Métis women still remain the primary caregivers of their children and families, regardless of the situation they find themselves in. Aboriginal women have twice the amount of children than their non-Aboriginal counterparts. Due to this responsibility, Aboriginal women who enter prisons leave families behind. Some women are even pregnant. Aboriginal women are brought up with worldviews that center around relationships and their connections to family. The isolation and absence of their family is the most devastating for these women and great suffering occurs to them while there. Due to recent changes to correctional facilities in Canada, Corrections Services Canada has developed, in partnership with Aboriginal communities in Saskatchewan, facilities that allow women to live with children under four years old and to carry out their sentence in a place that focuses on healing. This is the best answer for Aboriginal women in correctional facilities in Canada.[17]

[14] AJI (1992). Aboriginal Women Society of Ontario

[15] Statistics Canada. Aboriginal Peoples Survey 2001.

[16] AJI (1992), page 481

[17] Ochi healing lodge in Neekaneet, Saskatchewan.

WE RECOMMEND THAT:

1. Funding be made available by federal and provincial government departments, to research the needs of Métis Women Offenders in Saskatchewan, that will lead to the development of a reintegration programming and a Métis-specific healing lodge for incarcerated women and their children.

2. The needs of Métis women be made a priority through as inter-sectoral approach with MFCJS, the Métis Women of Saskatchewan, Métis Nation – Saskatchewan and federal and provincial government departments. Métis women need programming targeted towards health, education, parenting skills, budgeting and life skills.

3. Métis women Elders need to be promoted and utilized. Recruitment of Métis women Elders is needed.

ELDERS - SENATORS

> "It is understood that the term 'elder' has a distinct meaning with expected roles and behaviours in Native culture. Calling an individual an "elder" acknowledges the person's accomplishments, experiences and wisdom and is not in reference to chronological age…Life is strict, but if you follow teachings, you will have a better and longer life."
> Norah George[18]

Elders are well respected in Métis communities because they hold the wisdom and history of the community. They are called upon as teachers, counselors, and peacekeepers. They are the historians of the Métis people. They have the wisdom of the past years and know the traditional practices and ceremonies that are necessary for the continuation of the Métis Nation.

On July 22 and 23, 2003, MFCJS and the Commission on First Nations and Métis Peoples and Justice Reform held an Elders Forum. Two representatives from each region were asked to attend. This forum included the Senator from that Region and an Elder at large. They raised a number of concerns specifically relating to youth and youth in conflict with the law. They also raised a number of issues and concerns about the justice system: Cree court, the need for more Court workers and justice workers, the need for culture camps, the need to pass on the language, culture and heritage of the Métis. It also developed a number of recommendations that are reflected throughout this submission. We thank the Elders for sharing their time, wisdom and thoughts with us.

MFCJS held, "The Wisdom of Honouring Our Métis Elders Conference," on March 25-27, 1998. Approximately 220 Elders attended the conference. They defined the role of the Elder today and how they would like to be involved in the community:

The Role of an Elder is to:

- Pass on the language (Michif, Cree, Dene, Saulteaux, French, etc.)
- Show respect to other Elders in the community
- Bridge the gap between Elders and youth
- Provide a sense of pride in the Métis heritage and traditions
- Tell stories and legends
- Offer guidance (not lectures)
- Teach language classes (Michif, Cree, Dene, Saulteaux, French, etc.)
- Teach other First Nation teachings
- Hold/lead/support summer culture camps
- Tutor students to help them cope with life
- Talk to young people about traditions, customs, and languages
- Act as counselors at schools
- Teach parenting programs
- Teach children in schools about culture, history, the present, and the initiatives that Elders have taken
- Form partnerships with youth to solve problems

MFCJS. "The Wisdom of Honouring our Metis Elders Conference Report. March 1998. Prince Albert. Saskatchewan.

What has become apparent during our consultations with the Elders is that they want to be involved in their communities throughout all sectors. We must strive to include Elders in providing guidance and direction to all Métis affiliates, programs and services and government departments. They carry with them great wisdom and respect must be paid to them. Therefore we recommend that Elders be involved in the development, design, implementation and delivery of programs and services. We also recommend that an Elder advisory position be allocated on all local, regional and provincial boards to provide direction and guidance. At the governance level, Elders play a large role in the governing of our Nation as outlined below.

Métis Nation - Saskatchewan Senate[39]

The Métis Nation - Saskatchewan Senate (Senate) was established in September of 1991 in an aim to provide Elders with an opportunity to guide the governance activities of the elected leadership. The senate was also given the responsibility to provide the needed historical understanding and experience to the development of Métis culture. They were to provide advice and consultation on important matters to the Métis Nation. The roles and responsibilities of the Senate were further considered in the Métis Nation - Saskatchewan Constitution in December 1993, providing the Senate with the quasi-judicial role of dispute resolution at the regional and local levels. The work of the Senate was always recognized and continues to be recognized as an integral part of the governance of the Métis Nation and the institutions that are developed therein. Further, as the Métis Nation - Saskatchewan undertakes to govern its citizenship through the development of legislation, the role of the Senate is recognized as the desire of all of the people to honour our history and traditions and the values imbedded in each. Their experience and knowledge has proved a necessary light in a journey often historically cloaked in darkness.

History of the Evolution of Roles and Responsibilities

In its earliest stages, the Métis Nation - Saskatchewan Senate worked in the capacity of advisor to the Métis Nation and its leadership. This function was performed at local, provincial and national levels, and the Senate was recognized as having the mandate to help define the visions and mission of the governing body. Clearly, the Senate perceived their role as guardian of the Métis Nation - Saskatchewan Constitution and to speak always on behalf of the people on matters of governance. As the structure of the Senate was such that each of the twelve Métis Nation - Saskatchewan Regions would appoint one Senator, with one representative from the Métis Women of Saskatchewan; these lifelong appointments were meant to bring consistency to the inevitable growth and change of the governance structures.

Today the Senate is responsible for the swearing-in of the members of the Métis Nation Legislative Assembly (Executive, Regional Directors, Local Presidents); for initiating laws respecting decorations, medals of honour or other commemorative honours of the Métis Nation; and for resolving internal disputes among members of the Legislative Assembly and any of the Locals and Regional structures or Women's representative bodies within the Métis Nation - Saskatchewan. Their role has expanded to include the undertaking of all ceremonial activities, including opening and closing prayers, flag ceremonies and the playing of the anthem. Further, they were mandated to oversee the election process and serve in that capacity as the Métis Elections Commission and the Appeals Commission, as required. The quality of service of the Senate to the Métis Nation, its government and its citizens, is recognized by the expansion of Senate roles and responsibilities. The Métis Nation - Saskatchewan will continue to seek core governance funds from government to support the work of the Senate in order to ensure this work can be sustained in all existing and future developments of the Nation.

---

[39] Métis Nation-Saskatchewan website. Retrieved on November 11, 2003 from www.Métisnation-sask.com/governance/senate.html.

Currently, the Métis Nation - Saskatchewan Senate receives its authority from a variety of sources, recognized formally in the Métis Nation - Saskatchewan Constitution of 1993, Article 12 – Senate Women and Youth. The Constitution sets out the powers of the Senate in regards to regional and local disputes, elections and matters of citizenship. The mandate and powers of the Senate are set out in the Senate Act, with further clarification of their roles in each of the respective jurisdictions of citizenship, legislative authority and elections in the respective pieces of legislation - Legislative Assembly Act; Elections Act; and Citizenship Act. The Senate has a role also in the Wildlife and Conservation Act.

The Métis Nation - Saskatchewan legislation clearly sets out the leadership role that the Senate has been given in the governance of the Métis Nation - Saskatchewan, a role that allows for all grievances to be heard and to be dealt with in a fair and expedient manner. The leadership is further provided with a sound second thought and sound judgment process through access to a formal committee of Elders through the Senate process. The role of the Senate in the continued development of the Métis in Saskatchewan cannot be stressed enough. The wisdom and patience of the Senators can only strengthen the future for all, both within the Métis Nation and within the country of citizens with whom we co-exist in Canada. The Senate provides an opportunity for all Canadians to access our proud past, to be comforted by the knowledge that the future will indeed be grounded in the past and that the development of the Métis governance will be premised upon the courage, pride and respect that our Elders have shown over history and amidst great struggle.

WE RECOMMEND THAT:

1. Financial resources are allocated to support the involvement of Métis Elders in the development, design, implementation and delivery of programs and services.
2. An Elder advisory position is designated on all local, regional and provincial boards to provide direction and guidance.

RESTORATIVE JUSTICE

In recent years the non-Aboriginal community has adopted traditional methods of resolving conflicts from the Aboriginal people of Canada. It is called Restorative Justice. Traditionally Métis people relied on these methods which is best described by a Métis leader in Manitoba, Jim Dumont:

> "For the Aboriginal community and for the individual, the over-riding motivation for achieving justice in situations of conflict and deviance was that of restoring peace and equilibrium within the community and reconciling the accused with his/her own conscience and with the community and reconciling the accused with his/her own conscience and with the individual family that is wronged. It is a difference that significantly challenges the appropriateness of the present legal system for Aboriginal people in the resolution of conflict, the reconciliation and the maintenance of community harmony and good order".[10]

Aboriginal people describe restorative justice as a variety of methods aimed at restoring balance and harmony to an individual. It is derived from traditional Aboriginal methods of restoring back to a healthy state, from one that was imbalanced, in disharmony and therefore unhealthy.

The principles that these methods are based are: the value of each person, the earth, and all that is contained within it, including those from the spirit world. The principles are concerned with reciprocal, respectful and responsible relationships, based on a holistic perspective of health. This holistic approach is the need to heal and balance all areas of ones being - physical, spiritual, emotional and mental. The cyclical holistic approach values the interconnectedness of ones relationships to the earth, animals, people and the spirit world.

This restoration aims to bring back health to a person who has chosen an unhealthy path and who is out of balance within the four areas of the body. Bringing back health to a person is often addressed in relation to the mistakes made within the justice system, relating to the over representation of Aboriginal people as victims within this system. Existing methods of punishment and isolation have proven to be destructive and do nothing to help a person integrate back into the community. The justice approach is to help re-integrate a person back into a community or to divert offenders to community based programs.

Communities provide the help that an offender needs to return to a community. They also provide the services of a judge, counselor and may include sentencing circles. These restorative justice programs may include Elders providing counseling, mediation and spiritual healing help. It may also include sentencing alternatives, such as circles, or community members being more involved in the sentencing of a person along with the usual justice machinery. Other examples include a talking circle, where those present have been affected by the offense, including the perpetrator and victim and their families.

Effort also needs to be placed on preventing the behavior from happening in the first place. This includes working with children and the whole community to build personal responsibility, respect, honor and humility in various ways. These are fundamental values that are absent in colonized communities, as in the Métis community. Restoring traditional Métis values and methods involves the building of both human and resource capacity within the Métis community. These critical factors are necessary to provide the services required for Métis to take care of their own people instead of having the outside justice system do it.

Justice to Métis people does not mean the current legal system. It entails the ability to heal oneself and ones community and to keep things in balance and in harmony with the surroundings. The focus is not on finding fault but on repairing the wrong that has been done and bringing trust and respect back into the relationships that have been shattered. The offender pays for the offense by the commitment and efforts by working through the healing, emotions, growing, and learning from the teachings from Métis laws of justice. Ways in which an offender can pay his/her retribution to the victim is to ask for forgiveness, look after some aspect of the victim's family and to commit to healing throughout the process.

[10] Dumont, J. (1993). Justice & Aboriginal People. In Royal Commission on Aboriginal Peoples (Eds.), *Aboriginal people & the justice system* (pp. 68). Ottawa: Canada Communication Group – Publishing

Justice is also about the ability to be self-governing, being able to decide on one's life, and not depend on anyone else to determine one's path. To truly have the ability to restore balance and use past methods to become healthy again, requires a shift in the way government does business with Métis people. There has to be a shift in the recognition of the Métis nation as one that has Aboriginal rights, instead of denying this and playing political football by bantering the Métis right issue back and forth between the provincial and federal governments. Métis people have Aboriginal rights that must be recognized by the federal government, in the form of agreements addressing the land, self-determining rights and resource rights put forth by the Métis since the Canadian constitutional provisions of the early 1980's.

Recent court decisions ruling in favor of Métis rights demonstrates what the Métis position has been all along. Métis people have rights to land, a place of their own in government that does not colonize and rights to resources to be self-sustaining peoples. As Clem Chartier, president of the Métis Nation - Saskatchewan says, commenting on the recent Supreme Court decision, Powley vs. R:

> "This is icing on the cake… it affirms our right to hunt, fish and trap" [41]

Similar court cases in Saskatchewan had similar rulings. This shift in the Canadian psyche and by those in power in this country merely proves the position of the Métis. It is now time to take action and legislate these rights, rather then merely continuing to talk about whether they exist.

WE RECOMMEND THAT:

1. Both Provincial and federal governments change their perceptions about Métis rights and begin negotiations on how they will be honored and respected.
2. Métis rights are restored, through government recognition enacted in Federal legislation that connects these rights to land, funding and proper resources to be self-governing.
3. The above recognition requires control of the administration of justice for Métis people in Saskatchewan. This control over justice by the Métis people will include community reparation and restorative justice and healing.
4. In the interim, governments must step back from controlling justice and move towards facilitating and empowering Métis communities to regulate their communities based on their unique beliefs and needs.
5. The ability for Métis communities to work on partnerships and share information and resources is created. This is to be reflected with an agreement by all levels of government and Saskatchewan Métis communities that spells out the capacity for communities dealing with many areas of the justice system conditional on the building of community capacity and on government observing not determining.
6. To reflect the rights of Métis in Saskatchewan, it is recommended that negotiations occur immediately aimed at building community ability and providing proper assigned resources that will allow more community healing and restoration to take place.

---

[41] Global Newspaper article, Sept 2003

COMMUNITY DEVELOPMENT

In this section we are discussing the issue of community development in relation to implementing changes to the justice system. Based on the fact that a review has been undertaken, it seems fair to say that there has been an acknowledgement by the provincial government that there is a need for change. The implementation process will determine the level of commitment and the degree of change that government is willing to undertake in establishing a positive, inclusive relationship. Dedication of substantial time, effort and resources will be a tangible indication of this commitment.

Following is a definition of "community" and an overview of past approaches governments have taken in dealing with the Métis.

WHAT IS COMMUNITY?

> "Community is a feeling, a perception of connectedness both to other individual human beings and to a group. Building community then involves building bonds between human beings and to a group. Where there is no perception of connectedness among a group of people, there is no community. Although we may live in the same neighbourhood, municipality, country, state or nation, be governed and served by the same institutions, we may have no sense of connection with each other, no sense that we are part of a unified group. As such, we are not of one community."[12]

This statement offers a perspective of the Métis experience within the Canadian community. Our life experience has been overshadowed by feelings of isolation from the general community, as efforts have not been made to build the bonds of inclusion. This lack of connection has resulted in feelings of hopelessness and apathy due to lack of control over decisions that affect us. If we (the Métis people and larger community) are to make positive change, then we must revisit the past to rebuild what was taken away.

At one time, the Métis had strong, self-reliant communities. Their survival was dependent on individual acceptance of roles within the community. These roles varied according to individual skills, abilities, age and gender. The rugged environment in which the Métis lived created an environment where consequences of not fulfilling one's roles were often direct and immediate. The long-term well-being of the community relied on individual and communal acceptance of day-to-day responsibilities. Families and communities worked together to build stability for the future.

The buffalo hunt is a good example of this principle. The communities' survival and prosperity was dependent on the success of the hunt. Years of experience taught our people what worked best to accomplish our goals. This is evident from the "Laws of the Hunt" which laid out strict guidelines and roles regarding how the hunt was to be conducted. Efforts and resources were carefully coordinated to maximize results. Everyone participated and everyone benefited as the whole community prospered. There was a communal acceptance of responsibility towards the Elders and the less fortunate. Ability and skill was recognized and the produce from the hunt was shared among all. Individuals took pride in and felt valued for their contribution. The result was a positive, thriving community that recognized challenges and coordinated efforts to overcome them. Community members were part of the decision-making process regarding issues that affected them.

This is not to say that these principles were unique to the Métis community. The survival of the non-Aboriginal settlers depended on the same type of cooperation and community-driven spirit. However, the government's assimilation policies were not applied to the settlers therefore their experience and perspectives are very different from the Métis. Government interference and manipulation of situations and events resulted in the breakdown of economically and socially thriving communities. Loss of access to resources formerly available for everyone's benefit had a devastating effect on the Métis community. Once self-reliant, healthy families were forced to depend on the "goodwill" of governments and the interpretation of paternalistic policies by those acting as their agents. Decisions that affected their lives were made in isolation from them; were often impractical and reflected the governments' assimilation agenda. The socio-economic impact of this forced dependence, resulted in the fragmentation of communities and the break down of the Métis family unit.

---

[12] McCold, P. & B. Watchel. (1997). *Community is not a Place: A New Look at Community Justice Initiatives.* Retrieved on December 12, 2001 from http://www.restorativepractices.org/Pages/albany.html.

This mind-set continues to impact our communities and forms the basis of the issues we currently face. The intergenerational marginalization has resulted in a dependent mentality within our communities and has eroded feelings of connection and belonging in the larger community. In fulfilling our obligation to the Justice Review Commission, Métis Family and Community Justice Services, Inc. took the opportunity to ensure that the voice of the Métis was heard. Our communities spoke clearly about their concerns regarding their children, families and communities. This input is critical to begin the process of personal and community empowerment (development) and cannot be viewed as an "event".

Community development is an ongoing process that requires long-term commitment by all stakeholders. It is a living process that evolves over time. There must be an understanding that at various times stakeholders may change and the focus may shift. However maintaining ongoing, open lines of communication will determine the success or failure of our efforts. If the "connection" between the Métis and the larger community as a whole is to be built, then the starting point must involve our people in defining the issues; identifying/clarifying solutions and supporting them through the implementation process. Activities undertaken throughout this process must allow flexibility to accommodate differing levels of individual and community skills and resources.

Communities identified that the magnitude of problems seem overwhelming and they often feel unqualified and il equipped to offer solutions. Individuals under value their life experiences and knowledge. They do not understand that this personal experience gives them an insight into the problems that someone from outside the community could never comprehend. This is directly related to the effects caused by years of externally imposed solutions.

How do we (the Métis people and the larger community) build the bonds to establish the "connectedness" of community? As in any relationship, there must first be an acknowledgement that the status quo is not acceptable. Partners must look within to see the merits of this relationship in terms of communal (Canadian) well being and make a decision as to whether or not they are willing to take the risks and do the work required to make fundamental changes. Such change can only take place in an environment of mutual trust and respect.

Throughout the report we have identified many over-arching issues that impact Métis communities and have made recommendations for changes to the justice system. However to be effective these changes must reflect the underlying causes. It is important that all stakeholders participate in developing and implementing solutions. Fundamental to sustainable change is commitment to involving Métis communities in the development and implementation of strategies that affect them. This process will be a strong indication of the government willingness to address the Métis people as a partner, rather than a "client". It is recommended that a community development component be included in the implementation process that reflects the following guidelines:

WE RECOMMEND THAT:

1. Communities be allowed to lead the change and governments (Provincial and Métis) act as the facilitators;
2. Respect for the roles of our Elders within our communities by supporting their involvement in the development of implementation models and within the delivery of community-based initiatives;
3. Support and facilitate the involvement of recognized Métis organizations and affiliates in working within Métis communities in the development and delivery of initiatives;
4. Recognize the long-term nature of community development and make the commitments necessary to establish sustainable change;
5. Support consistent, stable provincial and community-based initiatives by including capacity building requirements into program development;
6. Flexibility within strategies to recognize the interrelated and overarching nature of issues affecting our communities and at the same time acknowledging the varying needs of individual communities;
7. An inclusive approach be taken within communities to reflect the interests of all stakeholders;
8. Develop streamlined, consistent application and accountability requirements;
9. Recognition of varying levels of community readiness and flexibility to devolve administrative control as community capacity expands.

VICTIMS

> "Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system"[13]

For as long as there been people on earth there have been those who have been unfairly treated and who have suffered emotional and/or physical harm as a result of the actions of others. Control over circumstances affecting their well-being has been taken away from them. The term "victim/s" is used to identify this person or group of people.

One would assume that the very fact that someone has been unfairly treated would result in immediate action to rectify the situation however this is not always the case. In fact at times, society has a tendency to view the victim as "weak" or to blame for allowing the action to happen. People often look at victims in a negative way by judging or blaming them. It is only recently that governments have made concerted efforts to recognize and address the rights of the victim/s.

The dynamics of victimization within the Métis community is complex. A person can one-day be a victim and the next the offender. In fact, very often the offender has at one time been a victim and is unconsciously "acting out" their anger by passing it on. In many cases, the victim and offender are family members or close acquaintances. Family unity is a strongly held belief within the Métis community and if one-member reports and charges one of their own; the victim is often punished for breaking up the family. This creates a complex situation often resulting in the victim being unwilling to report the offence and therefore the cycle continues.

As mentioned previously, in many cases the offender was once a victim. In order to have positive, long-term impacts on crime rates, justice strategies and alternative measures must recognize of the need for the victim/offender to heal and holistic approaches to healing. First priority of course must be to maintaining personal/community safety. Adopting this perspective may be very difficult to accept in cases where a life has been taken or other violent offences committed.

Further to this, the Métis experience within the justice system has led to an environment of fear, mistrust and dissatisfaction. There is a general mindset that their feelings and issues are not taken as seriously as non-Métis victims; that their safety and well-being is not a priority; and/or perhaps they will be victimized again by the very processes which are meant to support them. These experiences have taught Métis people to avoid contact with police whenever possible, and results in many unreported offences.

Taking into account the previously mentioned factors, what are the needs of Métis victims? They are no different then any other victim's needs as outlined in the "Canadian Statement of Basic Principles of Justice for Victims of Crime". However, based on the long history of injustice to our people, special efforts must be made to build a relationship of mutual trust, respect and fairness. In short, governments must demonstrate through action that a Métis victim's issues will be addressed in the same manner that a non-Métis victim's issues are addressed.

To begin this process, it is important to recognize that traditional Métis justice processes were very community-focused. This principle has been implemented in numerous community justice programs over the last decade therefore expanding such programs would benefit the community as a whole. An example of such supports is the:

- Aboriginal Resource Officer Program which assists Aboriginal victims of crime; Aboriginal victims of unreported crime; at-risk Aboriginal individuals and involvement in community/policing programs;
- Community Justice Programs that provides mediation services between the victim and the offender.

---

[13] Department of Justice. (2003). *Canadian Statement of Basic Principles of Justice for Victims of Crime*. Retrieved on December 15, 2003 from http://canada.justice.gc.ca/en/ps/voc/csbp.html

WE RECOMMEND THAT:

1. More funding, training and resources are directed to victim's service in the rural and northern communities with a focus on hiring Métis aboriginal people.
2. Victim Services be moved to more appropriate locations away from police stations.
3. An Aboriginal Resource Officer Program is operated by Métis communities for Aboriginal people.

POLICING

Problems with policing have emerged as an area of great concern and contention throughout the life of the Commission on First Nations & Métis Peoples and Justice Reform (JRC). Racism within some police forces in Saskatchewan spurned the creation of the JRC. It is suggested that numerous deaths have been attributed to this factor within the police force and the very existence of this Commission is testament to the seriousness of the issue of policing in Saskatchewan. The tragic deaths of Neal Stonechild, Rodney Naistus and Lawrence Wegner have raised grave concerns within the Aboriginal community yet they've largely gone unanswered. The tragic experience of Darryl Night and the successful prosecution of Dan Hatchen and Ken Munson have brought this issue to the forefront. Aboriginal leadership has been successful in lobbying for the establishment of this Commission to ensure that these young men's unfortunate deaths are not in vain. We mourn the loss of these young Aboriginal men and women with their families. We pay honour and respect to the following:

- Neil Stonechild;
- Rodney Naistus;
- Lawrence Wegner;
- Darcy Ironchild;
- Keldon MacMillan;
- Melvin Bigsky;
- Leanne Richardson, and;
- All other unidentified Aboriginal men and women who have passed on to the Creator.

The deaths of these Aboriginal men and women are a burden that the Aboriginal community carries as a whole. These deaths are not faceless incidents but rather these individuals lived full lives as fathers, sons and brothers. The women were mothers, daughters and sisters and left behind families that cared and mourn their death. It is important that they receive the honour and respect they deserve. This is a reminder to the Commissioner's of the First Nations and Métis Peoples and Justice Reform Commission (JRC) to remember that we are dealing with people's lives and some have paid a very high price. It is imperative that others do not fall victim to the system again.

Not a lot of solutions are available to deal with the multitude of issues facing policing in Saskatchewan today. Previous Commissions and inquiries have examined this issue and made recommendations. To date, however, major improvements have yet to be implemented. The Métis experience with policing has been primarily negative. Young Aboriginal men and women have been beaten, disappeared and died while in police custody or after police contact. There have been far too many incidents and facts brought forward to continue ignoring this issue.

This is not to say that all Métis/Police relations are negative. In communities where police members are involved in the community the relationship is much better. Police have the opportunity to develop and maintain relationships with the communities assisting to dispel any misunderstandings between the two cultures. This approach also helps the police and the community, break down potential barriers of ignorance. Involvement can include: participation in community forums, in schools, in crime prevention activities, and in community activities beyond the scope of the community. This process allows for necessary two- way communication and sharing of information, eventually allowing the Métis to include the police as members of their community. This may change the negative stereotypes and preconceived notions of police in the community. Métis people and police have a history based on oppression, dispossession and lack of trust.

HISTORY OF POLICING

Historically, the Métis were a proud, self-reliant, self-determining Nation that played an important role in the political economy and formation of Western Canada. The Métis had traditional forms of justice and governance structures in place prior to confederation. They formed provisional governments and had existing forms of social control. The rules of the Buffalo Hunt and the laws of St. Laurent are examples of early forms of Métis justice. However, any attempt to exercise their right to autonomy and to govern their people was viewed as threat to the state.

> "Injustices arose because our political and military expression of autonomy, and these injustices need to be addressed. Because the Métis split from the Canadian State in 1869-70, repression began in the Red River with an occupying force from Canada. That was followed by the formation of the North-West Mounted Police, which the Métis still view as an occupying force formed to control our people."[14]

The Canadian State, through the North-West Mounted Police, punished Métis people for exercising their Aboriginal right to be self-governing. Even though the Métis did not sign treaties they have inherent rights to land and the resources of Canada due to their distinct position in the history of this nation. This right was affirmed within the Manitoba Act, whereby Métis were allotted land as part of the settlement of that province. The Métis had a distinct way of life in which they provided for themselves and their families. A primary way of survival was living off the land. The land provided the Métis with food, clothing and an economy. Introduction of the capitalist system through the Hudson Bay Company and North West Company effectively eroded their economy by making their traditional and successful way of life illegal.

> "As the major agency of state administration on the plains, the North West Mounted Police used two weapons to marginalize the Métis people. Permissive laws allowed a form of inquisitorial justice to prevail in relation to the Métis. Famine and poverty resulting from the combination of climate, of military depredation and of settlement, gave the North West Mounted Police the power of life and death over many Métis. The carrot and stick of food in return for forced labour created a legal and social dependency class." [15]

The North West Mounted Police, acting as agents of the state exerted great power over Métis people. Since their way of life and livelihood was illegal, Métis people were subjected to impoverished conditions. The North West Mounted Police enforced this with an iron fist. The beneficiaries of this suppression were the Hudson Bay Company and the Government of Canada. The citizens of Canada continue to reap the benefits of this land, meanwhile the displacement of the Métis from their land also impacted greatly on their economy and livelihood. The federal government continually asserts that Métis have no land rights as taking script relinquishment any rights whatsoever. It is common knowledge that many illegal activities were involved in taking scrip and yet the North West Mounted Police did not protect or help the Métis uphold their rights. The injustices occurred in removing the Métis from their land base and so began the marginalization and criminalization of the Métis people of Canada.

MÉTIS / POLICE RELATIONS

Historical Métis relations with the police are predicated on the present relationship within contemporary society. Current relations between Métis communities and the police are strained, at best. To understand the role that history has placed in the development of existing relations is paramount. The mere recognition of wrong doings and apologies are simply not enough. Reality must improve and a pivotal change needs to occur in police attitudes. Policing of Métis communities must include Métis experiences, realities, expertise and recognition that they have valuable resources to offer. The marginalization and criminalization of Métis people must stop.

---

[14] Chartier, C. (1994). Metis Perspectives. In Gosse, R., J. Y. Henderson & R. Carter, (Ed.), *Continuing Poundmaker and Riel's quest : Presentations made at a conference on Aboriginal Peoples and Justice. Saskatoon: Purich Publishing.*

[15] Brogden, M. (1991). *Early Forms of Métis Justice.* In Corrigan, S. W., & Barkwell, L. J. (Eds.) (1991). *The Struggle for Recognition: Canadian Justice and the Métis Nation.* Winnipeg: Pemmican Publications (pp 51)

> "Police relations with local people are often not pleasant and this has a lot to do with the attitude of the officers that are coming into the community. Officers coming into the community often come into the community and the first thing they do is build a chain link fence around their home. What kind of message does that send? They walk around in schools, offices, and in restaurants in bulletproof vests with a pistol. What's the message?"
>
> Beauval Community Dialogue Participant

The criminalization of Métis people continues today; as police are excessive in arresting and charging, further marginalizing Métis people in Saskatchewan today. Métis people in Saskatchewan find no justice in this system. Many Métis people are living below the poverty line in depressed conditions, yet they are being punished by the system for being poor. This point is further emphasized by the high number of people being incarcerated for breach of probation and breach of conditions. Levying heavy fines on a person who cannot afford to pay is in fact a crime, from our perspective. Yet, many Métis people are incarcerated because of non-payment of fines. Is there justice in this? Who is enforcing the criminalization of Métis people today? Is it the Royal Canadian Mounted Police and the various municipal police forces in Saskatchewan? While it can be said that police follow government orders and are simply carrying out their mandate and job duties, this is nevertheless deplorable. It is definitely time to consider a different way of doing business.

MÉTIS AUTONOMY

> "The position of the Métis people remains that they have an inherent right to be a self-governing nation and to have control over law making in the administration of justice. The Métis have always claimed sovereignty over matters relating to their own people and have continually struggled to be self-governing."[46]

As noted above, the Métis Society of Saskatchewan, now known as the Métis Nation – Saskatchewan, has always maintained their right to self-government. The provincial and federal government has used the issue of jurisdiction to shirk their responsibility to the Métis people of Canada. Recognition of Métis rights by both governments is needed. The recent Powley decision has confirmed Métis rights and the federal and provincial government must follow suit by passing legislation and drafting policy that honours these rights.

The Métis right to self-government also includes the right to control not only the administration of justice within their jurisdictions, but to develop laws that affect Métis people in Saskatchewan. Understandably this includes the right to determine who polices their communities and how their community maintains its' peace and order. First Nations in Saskatchewan have entered into a Community Tripartite Agreement with the provincial and federal governments to establish police services based on the communities' needs. CTA's are a result of the First Nations Policing Policy that was designed, "to give First Nations more control over how policing services were delivered in their communities."[47] These agreements allow for the funding and infrastructure to operate the Police Management Boards, throughout 1/3 of the First Nations communities in Saskatchewan.

It is imperative that Métis communities also enjoy these services of policing within their communities. We recommend that a Métis Policing Policy be created in consultation with the Métis Nation – Saskatchewan. Both the Federal and Provincial governments need to begin recognizing Métis rights including the right to self-government and the right to determine the laws that affect them and the services to their communities. Métis communities should have the right to determine how their community is policed and the creation of a Métis policing policy will help to ensure this.

---

[46] Métis Society of Saskatchewan Justice Position Statement to the Report of the Saskatchewan Métis Justice Review Committee. 1992.

[47] RCMP "F" Division Submission to the Commission on First Nations & Métis Peoples and Justice Reform. March 13, 2003

It is also recommended that a process be established to discuss the Métis Nation – Saskatchewan's role in terms of Federal-Provincial policing agreements. Discussions should include the Métis Nation – Saskatchewan, Federal and Provincial government through the tripartite process. A Métis Policing Policy developed by the Métis Nation – Saskatchewan could be the framework for implementation of policing services in Métis communities in Saskatchewan. This is the long-term goal of the Métis Nation, to have control over all aspects of governance including the administration of justice services. Realizing that real changes and reforms will take time and hard work by all parties. An immediate short – term goal for policing in Métis communities is community policing.

COMMUNITY POLICING

The Report of the Saskatchewan Métis Justice Review: 1992 and the Aboriginal Justice Inquiry of Manitoba: 1991, recommended moving towards a community based policing approach within Aboriginal communities. Communities need to be a part of decision-making regarding community policing. This involvement, through police management boards and community justice committees, is a very positive step in some communities across Saskatchewan. Although, existing communities with such initiatives are constantly challenged with insufficient financial and human resources, as well as a lack of training. They need greater financial assistance and capacity building in order to be more successful and to feel a part of policing in their communities. We also recommend that the RCMP reinforce and enforce their community policing strategy and that all municipal forces across Saskatchewan shift to community policing until Métis communities can exercise autonomy over the delivery of policing in their communities by administrating justice within their jurisdiction.

The RCMP "F" Division defines community policing as a "partnership between the Community and Police in the delivery of Policing services." Their service delivery model is based on the principles of community policing: knowing and working with communities, identifying common problems and concerns, resolving problems, effective and directed enforcement.[18] We commend the RCMP on utilizing this community approach in policing. The Aboriginal Justice Inquiry stated that community policing has six characteristics which gives it a great deal of potential for improving the policing of Aboriginal people; it is decentralized, prevention-oriented, improves police-community relations, flexible and is more adaptable to Aboriginal culture.

However, community members across the province still continue to identify problems with policing such as: lack of community involvement, lack of trust between police and Métis communities, over charging, and an abuse of authority for both municipal and federal police forces in Saskatchewan. Community members also noted fear of police that impacts their relationship with the police. The mistrust goes both ways. Individuals may hold negative views of the police because of fear and lack of understanding of each other. Often, RCMP officers are placed in Aboriginal communities and have no awareness (and sometimes no desire) of the community and understanding of the people in that community. Strained relations are a result of lack of awareness, which can also lead to entrenched ignorance. This is unacceptable and extensive work is required at the community level to repair the relationship.

Policing in Métis communities needs to shift to a community policing approach. Police need to be involved in community activities so that they can be seen as being a part of the community. This will also allow for police to become more aware of the community that it is serving. The AJI principles of community policing outline the positive benefits of community policing that can be implemented in both urban and rural communities. Therefore, we recommend as a short-term goal that a policy be developed and implemented by all municipal, provincial and federal police services to ensure that community policing is practiced. As well, the RCMP needs to review its policies and strictly enforce their community policing principles throughout the province as a whole, specifically in Métis communities.

---

[18] Ibid

It is important to note there have been some positive developments in the area of policing. The RCMP "F" Division has implemented a community policing strategy and many municipal police forces are moving towards community policing such as Regina, Prince Albert and Saskatoon. The RCMP "F" Division has community policing as its service delivery model and we encourage all police services to move to this model of policing. The RCMP "F" Division is also involved in Operation TARGET, Commanding Officer's Aboriginal Advisory Committee (made up of Elders), and partnerships with the Aboriginal community. Saskatoon Police Services, Regina Police Services and Prince Albert Police Services have also noted extensive involvement in community activities such as:

- Representation on various community boards and organizations;
- Involvement with youth programs (Street Culture Kidz, Rainbow Youth Centre, White Buffalo Youth Centre);
- Representation on numerous community boards and committees;
- Elder's Advisory Committee;
- Cultural Relations unit;
- Various other community-based activities.

We commend the involvement of police members in the community and encourage more participation in all police forces in Saskatchewan. Much more hard work, commitment and support is required by all communities, police forces, Aboriginal government and organizations and levels of government to support the development of community policing in Saskatchewan. While there have been many good developments much work is still needed in this area.

MÉTIS COMMUNITY INVOLVEMENT IN POLICING

Community Justice Committees (CJC) and Police Management Boards (PMB) is key in reclaiming responsibility for policing in Métis communities. Currently, there are a number of committees and boards in Métis communities such as La Loche, Ile a la Crosse, Meadow Lake and Archerwill. CJC's and PMB's are a positive step in empowering communities to take ownership of their communities. Métis Family & Community Justice has identified strengthening existing CJC's as a priority with the long - term goal the creation of CJC's in every Métis community. Many of these boards are volunteered, with little resources supporting the activities. This results in high turnover and burnout for committee members. Financial support is necessary to support communities in taking responsibility of policing in their communities. Capacity building exercises such as training and human resource development programs are necessary to increase the role of Aboriginal communities in policing. CJC's require commitment from its members, as it can be a very difficult job at times. However, they also require commitment and support from the Métis Nation – Saskatchewan, the provincial and federal government departments.

We recommend that communities amalgamate Police Management Boards and Community Justice Committees into one strong committee. As capacity builds, communities can take more control over programming in partnership with Métis Nation affiliates. By doing this we can increase the role Métis communities play in policing. Possible expanded roles of Community Justice Committees can include Community Tripartite Agreements, selection and hiring of police recruits specific to their community, assessing community policing needs, priorities, evaluation of police effectiveness in community, community supervision of offenders, sentencing circles, and whatever the committee deems necessary.

THE USE OF DISCRETION

> "Then discretion is a huge factor in our involvement in the justice system, the police discretion. They have the right not to charge, they can make those decisions and they do every day, and I've seen it. And it's applied very negatively to our people. As well as judges' discretion and prosecutors' discretion. We have to look at that area and see what we can do to make things better."
>
> Métis Nation – Saskatchewan Eastern Region Dialogue

The exercise of discretion is an integral part of a police officer's duty. Discretion is defined as: "the autonomy given to patrol officers in carrying out their tasks and making decisions on a day to day basis."[49] Discretion is used when police officers are deciding upon a course of action to execute, which can vary from who to stop, to whether to lay charges or not. The exercise of discretion can be dangerous when police officers do not fully understand the community that they are serving, as noted by the Canadian Criminal Justice Association's report, *Aboriginal Peoples and the Criminal Justice System*:

> "While treating everyone identically might seem to imply that external values or considerations would not affect the objective application of rules, we believe that such a view would be mistaken. Any decision enforces some value. When the value enforced is that of the dominant group in society, however, it is easy for members of that dominant group to look upon the decision not as value-based, but as neutral."[50]

One's worldview has an enormous impact on the exercise of discretion. An individual's worldview and perceptions of life are framed by their history, family, community and other socialization factors. Since the majority of police officers are from a non-aboriginal mindset, it is common for them to see Métis people as being strange and completely opposite from them. This is the place that their decision on exercising discretion will be derived. Consequently this will negatively impact on Métis people due to an officers lack of knowledge and socialization experiences with Métis people. With the majority of police officers being raised in pre-dominantly non-aboriginal neighbourhoods, they will not have a basic understanding of Métis. Therefore, they will not have healthy point of reference to relate to Aboriginal people. While members of a dominant society believe that they are being fair and impartial they are in fact being discriminatory. The imposition of one's value system on another's tradition or cultural background is discriminatory. It is within this practice that systemic discrimination finds it roots.

RACISM

Recognizing and taking responsibility for racism strongly evident in the criminal justice system is key to begin healing the tenuous relationship between Métis people and the police in Saskatchewan. Allegations of racism are real and need to be validated. One only needs to review the deaths of Aboriginal men at the hands of the justice system for evidence. There are many reasons why racism exists with police forces today. To ignore this issue would be an injustice to all community members who have shared their stories of racism and policing. The Canadian Race Relations Foundation has identified six areas that may cause racism in police forces:

- The strong police identity gives police officers a feeling of power; they are protective of one another and many sometimes abuse their power;
- Training to prepare police for work in a society with a large immigrant population remains inadequate;

---

[49] Canadian Police Work. (Page 181).

[50] Aboriginal Peoples and Criminal Justice, Page 5.

- The real or perceived existence of a very wide social, economic and cultural gap between the lifestyles of police officers and the multi-ethnic neighbourhoods they patrol;
- The lack of effective mechanisms for identifying racist incidents, attitudes, and behaviours in institutions;
- The lack of appropriate corrective and disciplinary measures for abuses of a racist nature;
- Condescending treatment of complaints from racialized groups alleging racism.[51]

Racism is difficult to see and even more evasive when found in society's institutions. Systemic discrimination happens "when a specific act, policy or structural factor – intended or unintended – results in adverse effects from members of a certain group."[52] Systemic discrimination is deeply rooted within the criminal justice system and though unintentionally built into the system, nothing is being done to reverse its adverse effects. The criminal justice system and the police are foreign to Aboriginal people who struggle to relate. Therefore, they are distrustful of the system and do not view themselves as receiving equal access to justice. A relationship that is based on mistrust fosters a system of advesarialism and ignorance.

What is apparent in the exploration of racism and policing is that ignorance plays a huge role. Not understanding people one comes into frequent contact with can be detrimental. Stereotyping or pre-conceived notions further inflame ignorance which can lead to acting out on that ignorance or lack of respect for members of a certain race, religion or sex.

CROSS-CULTURAL TRAINING

Solutions to this contentious issue will not come easy. Much hard work, commitment and acceptance of responsibility is needed to begin rebuilding the rift between the police and the Métis community. Many commissions and inquiries before have recommended cross-cultural training and employment equity as possible solutions. However, such endeavors have not been very successful in the past, as decades later we are still facing the same issues. We recommend that the Métis Nation – Saskatchewan and appropriate affiliates develop a cross-cultural training package. Current cross-cultural training is out of date, First Nations focused and not taken seriously by recipients.

Development of a new program is needed that focuses on Métis experience and realities. Training must be more than just participating in cultural ceremonies. It needs to be updated to include: Métis identity, worldviews, values, beliefs, social structures, history and culture. It must be more than a one-day training, and should be flexible and adaptable based on the police organization's needs. Also, such programming should be offered on a continuous basis to new recruits, existing members and police management.

Community members have identified that the "old guard" police officers, referring to the status quo, are the most difficult to change in regard to racism and discriminatory attitudes. What may have been acceptable in the past is contemptuous and without reason. Recognizing that this is a very serious issue, we affirm and adopt the following Linn Report recommendation:

> "Police administrators be trained to identify signs of racial intolerance and remedial training programs be provided to any staff exhibiting racist attitudes and behaviours…where remedial training has not had the desired effect, appropriate disciplinary action be taken."[53]

We also take this recommendation one step further and request the development of assessment tools to monitor and screen police employees who exhibit racial intolerance. The development of a strict policy is needed to enforce disciplinary action and dismissal if remedial action is not effective.

Canadian Race Relations Foundation. (2003). *CRRF Facts about – Racism and Policing*. Retrieved June 16, 2003, from http://www.crr.ca/EN/MediaCentre/FactSheets/FactAboutPolicing.pdf

Ramsey, Erica. (page 311)

Linn, Patricia. Report of the Saskatchewan Metis Justice Review Committee. 1992. (Page 25)

EMPLOYMENT EQUITY

Employment equity is an immediate goal that can be implemented quickly. A high number of government, private and public organizations have enacted employment equity programs. The MNS expects more institutions to attract greater Métis representation at all levels in police forces. An important requirement of programming should include intensive recruiting from Métis communities. Efforts need to be directed at recruiting Métis people according to the newly accepted definition of who is Métis by the Métis National Council and the Métis Nation – Saskatchewan. The Linn Report also recommended, "a minimum target would be the percentage of aboriginal people in Saskatchewan; the optimum, a percentage of aboriginal staff equal to the percentage of aboriginal offenders served."[54]

A recommendation for improved policing involves policing pre-employment programs to be developed and designed to train Métis people in the area of policing. Gabriel Dumont Institute or Dumont Technical Institute could easily establish programming in conjunction with a university or Saskatchewan Police College. Such programming may assist in preparing Métis individuals for successful completion of policing entrance exams. Development of such programming may increase the amount of Métis police officers in police services across the province.

EXCESSIVE USE OF FORCE & ABUSE OF AUTHORITY

Many Métis community members raised allegations regarding police abuse of authority and excessive use of force. Stories of being beaten after being picked up, threatened and too much force used in their handling, were told throughout the consultation process.

> "Abuse of power and the distorted exercise of discretion are identified time and again as principal defects of the system. Aboriginal people often see the police as a foreign, military presence descending on communities to wreak havoc and take people away. Far from being a source of stability and security, the force is feared by them even when its services are necessary to restore a modicum of social peace to community."[55]

The Northern Saskatchewan Métis experience has been the following:

- Police assaulted a ten-year-old girl and broke her arm. The police were attempting to get access to her parents and she "got in the way";
- Elder removed from her bed and taken to jail in her nightgown, released and left to find her own way home;
- Police refer to cells as "dungeon" and threaten people, "Don't say a word this is my dungeon";
- Poor conditions in RCMP holding cells, people in jail only allowed to shower once a week. People getting scabies while in custody.

Under these circumstances, it is clear why many Métis people do not view police presence in their communities as a positive thing. Police are mandated to "serve and protect" the communities they are in. However, Aboriginal communities do not view police as a resource similar to what most non-Aboriginal people view. They prefer no contact with the police, even when police are there to help. Every effort must be made to incorporate Métis values and beliefs into policing services. Cultural awareness may assist officers in the exercise of discretion. Police Services are coming forward and accepting responsibility for past wrongs in their ranks and are attempting to deal with this issue. This may be a starting point for a new relationship between Métis and policing agencies.

---

[54] Ibid, pp. 33.

[55] Canadian Criminal Justice Association. (2000). *Aboriginal Peoples and the Criminal Justice System*. Retrieved on April 22, 2003, from http://www.ccja-acjp.ca/en/abori.html

> "We had indicated as I understand, that we didn't have any other incidents of this nature. In fact, we have. And that's come to my attention and I think we have to take ownership of things that have transpired. It happened more than once and we fully admit that and, in fact, on behalf of the police department I want to apologize to those people who we had said it was a one-of-a-kind incident."[56]
>
> Saskatoon Police Chief Russell Sabo

Métis and Aboriginal worldviews differ greatly from that of non-aboriginal societies. This difference is found in beliefs, values, acceptable methods of behaviour and norms. Police officers often do not understand these differences. What is acceptable to Métis people may differ greatly than that of the police officers. This difference may be compounded when police come into contact with Métis people. In general police are trained to use physical force instead of dealing with the human being who is in conflict or is in need of help. Most crimes committed by Aboriginal people are petty crimes and require a lot less force and a lot more humane skills to successfully approach issues than what is currently offered by police forces throughout the country. Although the role of a police officer is slowly changing, as is witnessed within police academies, these changes are not quick enough and not impacting enough people.

Apart from changing the very nature of police work, more needs to be done to help non-Aboriginal police understand the Métis worldview and culture. Training at RCMP "F" Division and the Saskatchewan Police College need increased emphasis on cross-cultural training. The present training in cross-cultures has to be changed and in partnership with the Métis Nation – Saskatchewan. It should be an on-going course throughout the policing program at every level. This should also include the development of a course that focuses on policing in Aboriginal communities.

A concern noted by many community members is that Aboriginal communities are training grounds for the RCMP "F" Division. Community members attributed the inexperience of new recruits to abuse of authority or excessive use of force. A short-term recommendation is that prior to placement in Aboriginal communities, an orientation to the community by its members is necessary. This program would include introduction to the community's language, culture, values, beliefs and social structure. Elders of the community could facilitate such a program, as they are the holders of the wisdom, knowledge and history of their people.

MÉTIS REPRESENTATION IN POSITIONS OF AUTHORITY

In the last decade it has been common practice for institutions and governments to establish policies that promote Aboriginal people into their workforce. All too often the employment equity programs merely create opportunities at junior positions, which is not a solution to the problem. Governments and other institutions need Aboriginal people in greater numbers and in addition to those in senior or decision making roles. Many times, Métis people are not consulted about decisions made concerning policing and their communities. There have been some positive developments such as the Elders Advisory Council to the RCMP "F" Division and appointment of Aboriginal women to the Saskatoon Police Commission. However, this is not sufficient. There is a great need to have Métis input at decision-making levels. Therefore, we recommend Métis representation on all municipal police boards, the Saskatchewan Police Commission and RCMP "F" Division.

RACIAL PROFILING

Some community members have expressed concern over the emergence of racial profiling. Many Aboriginal people in this province believe they are stopped by police simply because of the colour of their skin. This is an issue of great concern. Much work needs to be done to educate and train police officers and educate enforcement agencies in Saskatchewan. In addition, more research must be conducted into the emergence of racial profiling of Métis and First Nation's people in Saskatchewan. Strategies need to be developed to combat this issue.

---

[56] CBC News Online. (2003). Who was Neil Stonechild? In *Indepth Backgrounder: First Nations*. Retrieved: May 6, 2003 from http://www.cbc.ca/news/indepth/firstnations/stonechildneil.html

LANGUAGE BARRIERS

> "First of all, language is a barrier and that has been addressed in many meetings the need for interpreters, the need for a better understanding of the legal terms. When a person enters into court the majority of these people don't have any understanding of what they're even being charged with at times."
>
> La Loche Community Dialogue Participant

Time and time again, Aboriginal people have identified language barriers when in contact with the criminal justice system. As police are often the first point of contact in the criminal justice system, it is important that they either understand the Aboriginal language in the community or have translators present upon contact with the community. Many people raised concerns in the community regarding this issue such as not understanding their rights, not knowing what they are charged with, and pleading guilty to crimes they did not commit.

Métis people find their identity deeply entrenched within their language. It involves the culture, heritage, and worldview. The most blatant example of these two divergent worldviews and languages is there is no word for "justice" in Cree. It is recommended that interpretation services be available upon charge. If a police member cannot speak the language, then every effort should be made to ensure that the client's rights are understood and protected. This needs to be reflected within the legislation and policies of police forces in Saskatchewan.

UNDER POLICING AND DELAYED POLICE RESPONSE TIMES

The lives of Métis residents of Northern Saskatchewan are at risk because of the methods currently utilized by the RCMP. Community members shared stories about incidents involving road or hunting accidents, people had to wait hours for a police officer to attend the scene. At times these incidents involved life and death situations, yet community ends up waiting hours for help. Better response time is needed and emergency calls need to be answered or responded to locally. It is recommended that a RCMP call centre be created to serve the needs of Northern communities better. Cree and Dene speakers must be employed within this call centre. Ideally, calls should be received at the community not in a facility thousands of miles away.

POLICE COMPLAINTS PROCESS

Métis people in Saskatchewan have no faith in the current police complaints process. The most common concern regarding the current police complaints process, with both the RCMP and municipal police forces, is that it is criminal that police are investigating police. The very premise of police investigating themselves leads to questions regarding the validity of the whole process. As a result of concerns regarding police conduct and aboriginal people, the Federation of Saskatchewan Indian Nations, launched a Special Investigations Unit to investigate police complaints. We commend the FSIN for the vision and fortitude of pushing the concerns with the police complaints process to the forefront and providing an avenue for First Nations and Métis concerns to be satisfactorily addressed.

One concern about the initiative is that case files seem to be too high. The Special Investigations Unit has such a high caseload as Métis and First Nations have more faith in Aboriginal processes. A concern with the FSIN SIU is that they are severely under funded and overworked. They currently have over 500 open case files and very little resources and capacity to deal with the influx of calls that have come forward. Métis Family & Community Justice Services currently receives many complaints from Métis people across Saskatchewan. Currently, we have no resources or capacity to deal with such complaints. We forward any complaints on to the Special Investigations Unit. Recognizing their high caseload, Métis Family & Community Justice Services, Inc. would like to establish our own investigations unit.

WE RECOMMEND THAT:

1. A process is established to discuss the Métis Nation – Saskatchewan's role in terms of Federal-Provincial policing agreements. Discussions would include the Métis Nation – Saskatchewan, Federal and Provincial governments, possibly at the tripartite table, to discuss and decide how to proceed based on those discussions. A framework for negotiations could be the existing First Nations Community Tripartite Agreements.
2. A policy be developed and implemented by the RCMP "F" Division and Saskatchewan Police Commission to ensure that community policing is practiced.
3. There be a shift to community policing until Métis Nation – Saskatchewan self-governance is realized.

Police Complaints

4. A Métis Special Investigations Unit is established.

Community Justice Committees

5. Amalgamation of Police Management Boards and Community Justice Committees into one strong committee. Provide the community justice committees training and adequate resources so that as capacity builds, communities can take more control over programming in partnership with Métis Nation affiliates.
6. Increase the role Métis communities play in policing. Increasing the role communities in policing includes building capacity and resources. Expanded roles may included policing agreements, selection and hiring of police recruits specific to their community, assessing community policing needs, priorities, evaluation of police effectiveness in community, community supervision of offenders, sentencing circles, S81 & S84, etc.

Cross-cultural Training

7. In consultation with Métis Nation – Saskatchewan and appropriate affiliates, a Métis-specific cross-cultural training package be developed and delivered by the Métis Nation to police services, R.C.M.P, court employees, corrections (federal and provincial) and any other parties. Often cross-cultural training focuses solely from a First Nation perspective or pan-Aboriginal approach. The Métis are a distinct culture with their own traditions, beliefs and language. It is imperative that cultural awareness training incorporate Métis worldviews and who we are as a people.
8. Cultural Awareness sessions must be held on a continual basis.
9. Development of assessment tools that will be used to monitor and screen out police employees who exhibit racial intolerance. Development of strict policy relating to disciplinary action and dismissal. Racism needs to be stopped. Policies need to be developed and strictly enforced to stop racism.

Employment Equity

10. The RCMP "F" Division and Saskatchewan Police Commission, in consultation with Indian and Métis organizations, immediately implement employment equity programs to achieve greater aboriginal participation at all levels. A minimum target would be the percentage of aboriginal staff equal to the percentage of aboriginal offenders served. (Linn Report, AJI, MAA)

11. Intensive recruiting from Métis communities for municipal police services and RCMP.

12. Employment Equity – Recruitment from Métis communities. Definition of who is Métis determined by Métis and those who declare to be Métis should be recognized by the MNS and/or by the Métis community.

13. Métis Institutions training our people for a career in policing. Pre-policing program at Dumont Technical Institute and Gabriel Dumont.

Métis Representation in Positions of Authority

14. Métis representation on all municipal police boards, Saskatchewan Police Commission and RCMP "F" Division. All boards that directly impact Métis communities.

Racial Profiling

15. Research must be conducted into the emergence of racial profiling of Métis and First Nation's people in Saskatchewan. Strategies need to be developed to combat this issue.

Language Barriers

16. It is recommended that Interpretation services be available upon charge. If police member cannot speak the language, then every effort should be made to ensure that the client's rights are understood and protected.

17. Existing Aboriginal liaison/cultural relations officer position be expanded and properly resourced.

Police Response Time

18. Police and Emergency response needs to be improved. Better response time is needed and emergency calls need to be answered or responded to locally.

RCMP Call Centre

19. It is recommended that a RCMP call centre be created to serve the needs of Northern communities better. Cree and Dene speakers must be employed within this call centre.

Excessive Use of Force

20. It is recommended that video surveillance equipment be installed in all police stations. Especially in the parking lot, holding cells and police cruisers.

21. It is recommended that changes be made to the way police recruits are trained. Ongoing training must be provided to existing police officers regarding excessive use of force and the Métis community.

COURTS

Canadian justice for Metis people in Saskatchewan is a symbol of an oppressive, patronizing system consisting of pompous attitudes and behaviors that are a reflection of the power and privilege allowed to a continuing non-Aboriginal people and a continuing British tradition. The basic principles of seeking justice for wrong doings has been completely distorted and misrepresented with mainstream society finding it difficult to deal with as well. Nevertheless, Metis people are confronted with the ineffective court process three times more than the non-Aboriginal society.

Métis people are part of the clientele of this system, which is just another arm of the enormous legal system, which handles more Aboriginal people than it does from the Non-Aboriginal community. The system is geared towards locking up Aboriginal people, as spelled out by the statistics, 75% of all those in the system are Aboriginal. Systemic racism, discrimination, using non-Aboriginal standards and high crime rates are just a few reasons the court system automatically incarcerates Aboriginal people. With numbers like this it becomes a self-fulfilling attitude. Because Aboriginal people constitute much of the clientele of the court and its servants, placing the blame on the victims themselves suggests that something is inherently wrong with the Aboriginal population.

Courts are considered the second step in that numerous chasm of a justice system in Canada. The language used, the players and the attitudes of the judges, lawyers and others are patronizing and steeped in colonizing language and actions. It is no surprise that Métis people find it difficult to understand the language, their rights, and find it hard to retain counsel to represent them when you consider the oppressive system reflected by the court system in Canada. Métis people find themselves outside this system. Sentences are longer, access to the services of courts is non-existent, nor is the resolution of cases quick enough. Frustration and lack of control are just a few affects Métis people feel, derived from being in front of lawyers and judges.

The socio-economic statistics confirm the difficult conditions that Aboriginal people experience before and after being in the system. Aboriginal overrepresentation accounts for 75% of the inmate population in Saskatchewan, the highest in the country. Not only do Metis people fail to understand the language and procedures of the court system. Judges, having seen countless Aboriginal people in the system, tend to base their decisions on stereotypes and discrimination and rule against Aboriginal people. Current research shows that Aboriginal people receive longer sentences during their short time in front of a judge[illegible].

The worldview of Metis peoples is based on traditional perspectives to take responsibility for the crime committed. In addition to this and due to the lack of time in circuit courts and overworked legal aid lawyers, Métis people are encouraged to plead guilty for the sake of expediency regardless of guilt.

Systemic discrimination occurs at every stage of this colonizing power, from arrest to incarceration. Judges within this system are the most influential having the biggest impact on people's lives. Metis people are harshly evaluated compared to non-Aboriginal standards of health and stableness. It is therefore no surprise that Metis people will be sent to jail more often, get longer jail sentences, be denied bail and be least likely to get out of jail early.

In northern Saskatchewan, community services and access to courts are substandard at best. There exists circuit courts, but where they are available there are numerous issues. The time an offenders gets with their counsel is minimal and because the services are only offered on a part time basis, the time an offender gets in front of a judge is inadequate. The facilities for this circuit party are sometimes not the standards they enjoy in the south and as a result some circuit courts will not hold court in some communities. In addition to the circuit courts, northern Métis offenders often travel great distances to attend hearings, sometimes only to have the court date delayed several times. All of the above problems are unacceptable.

[illegible] Manitoba AJI (1991), page 221

Better understanding, access and awareness of individual rights in the justice system by Metis people are needed. Currently the majority of Métis people are victims of this system and do not exercise their rights because they are intimidated by the system. They do not know what standards to expect of lawyers, judges and others within this system. It is because of this lack of knowledge and the systemic racism, that it is still considered (even though it is over 150 years old) a foreign system that continues to colonize and oppress.

Reforms to the existing court system are needed in the form of more diversion to other methods of retribution for the offender, respecting community culture and needs. The time one spends in court needs to decrease and help is needed in the court process such as more court workers for Metis people. There needs to be more Métis people in the system both at the entry levels to the top. Although more Métis people hold positions within the court system it has not kept up with the need. Other changes need to occur in the mechanisms of the judicial system. For example, pre-trial conferences, time limits on how a case moves through the system and better legal aid services are needed. Currently Aboriginal court workers do a good job assisting the Métis community but they should be under the control of their own people, instead of the existing justice system.

A model of success in northern Saskatchewan is the Cree court. Although it is operated in the first language of the people, the judge is Cree and the sentences consider the culture and life ways of the people. The Dene people face even greater challenges in the court system and therefore the Cree court model should be extended and created for the Dene people also

Recent attention has turned to the issue of jury selection within the Metis community. A rape trial of three non-Aboriginal men for the rape of a 12-year-old Aboriginal girl has highlighted the problems in the way juries are selected and used for such trials. The primary suspect that instigated the rape did not serve his short sentence in jail, instead he got house arrest, and an all white jury made this conclusion in this case. The laws and policies regarding juries need to be reviewed to ensure that an acceptable number of Aboriginal people be selected to sit on cases where the defendant is Aboriginal. The selection process also needs to be reviewed with a view to ensuring that Aboriginal people are first of all chosen and then selected to sit on all juries.

WE RECOMMEND THAT:

1. The current model of Cree court be expanded, consisting of more court time conducted in the Cree language.
2. A Dene court is created to serve the people in the far north.
3. Interpreter services are offered in every Métis community.
4. There be more effort and commitment to alternatives to incarceration, it should only be used as a last resort for serious offences or habitual offenders. Mediation, alternative dispute resolution and other restorative justice methods are needed instead.
5. The existing court process be improved by decreasing the time in which cases are concluded and by allowing people the right to due process and to cut back on the use of remand.
6. There be more resources in the form of legal education and that language interpreters be provided to Métis people prior to court. In addition there is a need for youth justice workers, family justice workers, and Aboriginal court-workers.
7. The pre-trial detention process is evaluated to determine the overuse of this step in the process and whether it is necessary.

8. Circuit courts need to serve the community better and make improvements to its personnel, judges lawyers and processes that respect the accused and their family's time, resources and well being.

9. The Saskatchewan government review its laws regarding the selection and choice of jury members, ensuring that Aboriginal people are selected to sit during trials affecting the Aboriginal community.

10. Expedience of the accused through the court process will minimize the trauma and stress experienced by the victim(s).

MÉTIS JUSTICE OF THE PEACE

The difficulties Métis people have with the justice system have been well known for some time; subsequently models have been introduced, aimed at addressing the issues. Although there have been problems with this model, the justice of the peace model is one that suites the Métis community best. It has been one that works because it incorporates Métis culture and honors the worldviews focusing on community capacity. This role simulates the role of a peacemaker or role of an elder; therefore there has been a demand for more of these positions in communities.

Due to the success of this model, it needs to be expanded with more money and programming that will allow more duties for this role. Included in this expansion should be the ability to adequately evaluate and assess progress as this role expands in communities, through the help of Justice Committees and more research and planning dollars.

WE RECOMMEND THAT:

1. Because the concept of justice of the peace has support in the community it is recommended that there be an increase in funding for existing Métis Justices of the Peace and in doing so, expand it in Métis communities.
2. The Métis Community Justice Committees supervise the above expansion. The Métis Justice of the Peace roles should also be expanded to include bail hearings, sign court orders, traffic violations, etc.
3. With this expansion, communities have enough resources to evaluate and measure this development along the way, especially in rural and northern communities.

LEGAL REPRESENTATION

As validated by statistics and studies, Aboriginal people receive less time with lawyers and especially with legal aid lawyers. This amounts to Métis people once again being unfairly treated in the justice system through systemic discrimination. Not only do they not know their rights, the Legal Aid representative that is supposed to help with this provides little time with them, yet is supposed to help with their understanding of the system and to present their story. This treatment of Aboriginal people is unacceptable and improvement is critical to decrease the numbers of aboriginal people in the justice system.

Métis people need to establish their own institutions in order to address these issues. What is needed is the political will by government and the resources to obtain this goal. As we build our own institutions, partnerships are required to offer programs to Métis people in order to create a place that reflects their worldviews and aspirations. Having more Métis people in the system and to be able to train these people within their own community is a necessity. An increase in Métis lawyers is required and programs need to reflect this such as establishing a Métis pre-law program.

Apart from the people working in the system, more education and resources are required for Métis people to become aware of their human rights and those rights within the justice system. Such a step does not have to cost a lot. What is needed more is the will to create it.

WE RECOMMEND THAT:

1. Government supports the creation of a Métis Legal Clinic focusing on Criminal and Family Law, as a pilot project. This clinic can hire articling students, therefore keeping the costs down. Once proven to be effective, it can be implemented into family wellness centres in Métis communities across Saskatchewan.
2. As part of the above Clinic, a Legal Education information function be included that is directed specifically at Métis people of Saskatchewan, which will educate people on their legal rights and responsibilities.
3. In partnership with a university, a Métis pre-law program be created that is situated within our Saskatchewan Métis institutions such as Gabriel Dumont Institute and/or Dumont Technical Institute.

LEGAL AID

In addition to the above issues on legal representation experienced by Métis people, legal aid service is mediocre at best. Legal assistance in the form of Legal Aid is often the only choice for Aboriginal people in Saskatchewan because of high rates of poverty. For Métis people this is the only option and sadly it provides services at a second rate level, thereby operating like a program for the underprivileged lacking adequate representation. Communities have noted that legal aid lawyers often use the legal system to stall on cases because there aren't enough lawyers to do the work, thereby overlooking Métis rights. Due to this burden that these lawyers carry, communities have heard that Aboriginal court workers have been asked to pick up some of the slack in this worn out system designed to help those that are most in need.

In a northern Métis community, a community member said the following about the services provided by of Legal Aid:

> "The Legal Aid system just doesn't work in Northern Saskatchewan. The Legal Aid lawyers don't even spend enough time consulting with the individual that is going to court. They come to court, well, you've got maybe 40-50 people that are going to court, got to see them before they go to court, they got maybe two, three minutes, maybe five minutes, that's the most that he can do. A lot of people are choosing not to deal with or access Legal Aid, they're just speaking on their own."
>
> Beauval Community Dialogue Participant
>
> "...Legal aid representatives aren't actually working in the best interest of the client. This is a concern because a lot of the legal aid representatives that the youth had to interact with weren't Aboriginal. They were non-Aboriginals. They didn't give the client any respect, and treated them as though they were common criminals. So there was a very real concern that these individuals aren't acting in their best interest."
>
> Métis Nation – Saskatchewan Youth Council Presentation

These comments do not inspire and make one feel confident that Legal Aid provides fair and adequate services to Métis people. Instead it speaks to a service that has continually deteriorated over the years, especially when it concerns Aboriginal people.

WE RECOMMEND THAT:

1. The Legal Aid budget is increased to allow for addition of more lawyers and better service.
2. Legal Aid lawyers need education and awareness to assist them in being more considerate and knowledgeable to their clients. Increased time spent with clients helping them look past the stereotypes and assumptions that often occur will assist this education.
3. More efforts expended to recruit more Métis lawyers at Legal Aid.
4. Expand upon the current Aboriginal Courtworkers program whereby MFCJS will be provided capacity funding to upgrade existing Courtworkers and add twelve to twenty more Métis Courtworkers under MFCJS's direction.

ALTERNATIVE MEASURES OR EXTRA-JUDICIAL SANCTIONS

Following the Gladue decision in the 1990's a number of pieces of legislation were changed to reflect this ruling which essentially supports restorative justice principles and allows more control by the community over some criminal justice matters. The Correctional and Conditional Release Act was changed and the Saskatchewan government instituted a policy called the Alternative Measures Program as a step in the right direction. The victim/offender mediation application of this program is very appealing and fits into the Métis aspiration to keep their youth within their communities. It also insists youth take responsibility for his/her behavior and utilizes Aboriginal methods of resolving conflict by talking about the problem with all concerned as a way to heal all those involved. It also uses the Métis ways of having the youth give back to their community in the form of community services. The new YCJA incorporates these principles and goals and has re-named them as Extra-Judicial measures.

As part of the alternative measure program, government assists communities by providing funding for services, which have been offered in a variety of ways according to community needs. They include sentencing circles, community justice forums and mediation services to name a few. As a testament to this program it is shown that Aboriginal youth in Saskatchewan have the highest utilization rate of Alternative measures that amount to 48% of all cases, roughly three times the rate of the non-Aboriginal youth population.[38]

These programs allow Métis people to be diverted from the criminal justice system, allowing the community to deliver support and restorative justice practices to youth, women and men within the Métis community in Saskatchewan. The resources allotted to this mechanism have provided the freedom for communities to hire workers who can offer more prevention and wellness programming. Awareness and information sharing may seem like a minimal process but it becomes valuable for Métis communities that do not have such information. As has been said in other sections of this paper, Métis people do not understand their legal and human rights. These community resources can provide for this.

The Federal Youth Criminal Justice Act that was implemented by the Saskatchewan government in April 2003 has the Gladue decision reflected within in it as part of the principles. As has been said this is a good first step, but it is not enough to just have a good set of principles respecting the Métis community's needs. It has to be accompanied by funding in order to enact this goal. There are no extra dollars to communities in order to implement this section of the Act, and it will be of no use if Métis communities do not have access to adequate dollars.

WE RECOMMEND THAT:

1. A process is required that includes Métis, First Nations and provincial and federal governments to review and revise the Alternative Measures policies to better reflect the needs of Aboriginal peoples.
2. Funding to communities is provided in order to adequately utilize this piece of legislation.
3. More awareness is created in communities regarding this option, so that alternatives to the justice system can be made.

---

[38] Statistics Canada. (2003). *2001 Census: Analysis Series: Aboriginal peoples and Canada: A demographic profile.* Ministry of Industry.

YOUTH CRIMINAL JUSTICE ACT

The new Youth Criminal Justice Act (YCJA) allows for alternatives to incarceration for youth. This supports what Métis community's value: keeping their youth in the community and an opportunity to restore Métis methods of helping restore their youth back to health and balance. Métis communities have been consistent in their demand that they be able to look after their own people in their own communities. The YCJA accounts for this. Since the inception of this Act, Métis communities do not fully understand the options available to them; therefore they need to receive more orientation to it.

The principles of the YCJA are supported by the MNS, such as community re-integration. Incarceration of youth should only be reserved for serious offences and habitual offenders. Most of the "crime" committed by youth does not fall into this description. Therefore this Act may divert youth away from being incarcerated, and re-establishes them back with family and community.

It is wonderful to have an Act honor Métis community principles of being able to take care of their own, but currently there is no capacity to offer youth alternatives to incarceration. Such programs cost money and resources are needed. Although this Act is a federal statute, it is incumbent on the Provincial government to provide the resources in order to properly use this Act in Saskatchewan. Too much money is currently being spent on incarcerating and criminalizing our youth when it is often unnecessary.

Inclusion of the Gladue clause within the YCJA is a victory for Métis youth, because it purports to account for the cultural and linguistic needs of youth when alternative measures are used within the system.

As part of the purpose of restoring community responsibility, the YCJA recognizes the important role youth justice committees can play in their communities. However, within the Métis community there is a shortage of resources and capacity to undertake such a role, especially for youth. This section of the YCJA will remain in written form as long as Métis youth justice committees do not receive adequate funding.

WE RECOMMEND THAT:

1. Adequately fund Métis communities to build capacity in order for the YCJA to be properly implemented.
2. Resources are needed to enact the two major sections of the YCJA that honour Métis ways of caring for their youth.
3. MFCJS must be provided capacity to direct these youth programs.
4. Both levels of governments come together with the MNS to commit to an implementation process that does justice to the new changes

CORRECTIONS

The correctional system is the last stop for those who come into contact with the criminal justice system. This is the continuation of the criminalization of Métis peoples. It is the final cog in the system, which is meant to separate those from society who have moved beyond society's view of acceptable behaviour and therefore must be punished. The primary goal of incarceration is to protect the larger society and effectively punish those who have broken the acceptable means of conduct. Another goal of incarceration is to rehabilitate offenders so that they might become law-abiding citizens upon their release.

Why is it that so many Métis men and women are being incarcerated? It is because they have stepped out beyond the sphere of acceptable norms and behaviours of mainstream society. One must ask whose acceptable behaviors are being enforced by the criminal justice system? The answer is not Métis or First Nations, but that of the Euro-Canadian citizens. Our current criminal justice system is deeply rooted in British law. It is this law that has torn apart the Métis Nation and the very core of its existence, the family. The process by which this is done is incarceration. The very premise of the Canadian criminal justice system is punishing those who do not fit into their notions of acceptable norms and behaviors of their society. The primary instrument for punishment is incarceration. This includes removing the offending citizen from their family and community to segregate them for an indefinite/definite time. Many people understand that jails have become virtual graveyards for countless Aboriginal people.

The Euro-based justice philosophy is clearly at odds with Métis worldviews, beliefs and values. It is on this premise that we proceed with the recommendations on behalf of the Métis Nation – Saskatchewan and the Métis people - whose backs have been broken in order to feed this system that has grown and flourished. The Métis communities stated this loud and clear many times throughout the consultation process and we pass this message on to you: we are the industry in which this system flourishes. We are here today to say ENOUGH!

It is our belief that incarceration should be the last resort, reserved only for those who pose a serious threat to themselves and the community. The damage caused by incarceration outweighs the benefits of incarceration, as discussed in the restorative justice section. Every effort must be made to avoid the use of incarceration as a means of punishment as it does more damage than good. For real change to occur the following principles need to be considered:

- Incarceration should be reserved for those who pose a serious threat to themselves and to the community and habitual offenders;
- Community wellness begins in the community. We need to empower communities to take responsibility for their wellness. They understand their needs and need to develop their communities based on their needs.
- We don't want institutions. We need healing.
- Recognition that the current system is inherently discriminatory and we need to change the way we do business.
- We need to change the current conception of justice to incorporate Métis beliefs, values, and identity.

MÉTIS OFFENDERS

> "Aboriginal people come into conflict with the law disproportionately to their representation in the general population. While representing 2.7 per cent of Canada's population, self-identified Aboriginal people represent approximately 17 per cent of all admissions to federal institutions."[59]

Aboriginal people are over-represented in all aspects of the Canadian Criminal Justice System, as identified by numerous reports over the last decade[60]. The Aboriginal Justice Inquiry of Manitoba best identifies the gravity of Aboriginal over-representation in the criminal justice system:

> "The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely than non-Aboriginal people to be denied bail, spend more time in pre-detention and spend less time with their lawyers, and if convicted, are more likely to be incarcerated."
>
> "It is not merely that the justice system has failed Aboriginal people; justice also has been denied to them. For more than a century the rights of Aboriginal people have been ignored and eroded."[61]

This is an issue of great importance to all of society but especially in Saskatchewan where the over-representation of Aboriginal people in the criminal justice system is most pronounced.[62] The Saskatchewan percentage of Aboriginal admissions to provincial/territorial and federal custody is seventy two per cent, one of the highest percentages in Canada.[63] The Aboriginal Issues Branch CSC Demographic Overview of Aboriginal Peoples in Canada, 1999 illustrates this alarming trend.

Adult Aboriginal people are incarcerated more than six times the national rate. In Saskatchewan, the adult Aboriginal incarceration rate is over 1,600 per 100,000, compared to 48 per 100, 000 for adult non-Aboriginals.

The preceding statistics should signify a crisis for all levels of governments. It is evident more needs to be done. One fundamental step is for federal, provincial, First Nations, and Métis organizations to collaborate on a strategy to effectively address this priority issue.

While there's a wealth of information and research in the area of Aboriginal offenders in general, currently there is limited information and research specific to Métis offenders. This identifies the importance of examining Métis offenders needs in depth, such as this research project does.

According to CSC Aboriginal Offender Statistics there are currently 885 federally incarcerated Métis male offenders, which represent approximately 4% of the federal inmate population. When put into context, the Métis adult population of Canada is 0.7%.[64] These statistics clearly identify the need to explore and examine the needs of Métis Offenders incarcerated in federal institutions and upon their release to the community.

Métis offenders face a myriad of issues prior to incarceration such as lack of access to support services, lack of support for families in conflict with the law, poverty, unemployment, addictions and other social dysfunction issues. Many of the issues that they face can be attributed to socio-economic issues often because they are the poorest of the poor and overlooked because of their limited status in Canada's class system. Upon entering provincial or federal correctional facilities they are presented with a multitude of issues, which are compounded with the existing issues that they are facing. Métis offenders experience trauma from geographic displacement, lack of support services while incarcerated, lack of community and family support, lack of Métis-specific programming and limited availability of reintegration programming. Métis women offenders also face a number of unique issues such as family breakdown as a result of incarceration, child abandonment and reunification, as well as involvement in the child welfare system as a result of incarceration. The above issues will be discussed in further detail as to provide an understanding of Métis experiences, realities and issues in the correctional system.

---

[59] CSC, 1999

[60] Law Reform Commission, 1991, Aboriginal Justice Inquiry of Manitoba, 1991; Saskatchewan Metis Justice Review Committee; La Prairie, 1995; Royal Commission on Aboriginal Peoples, 1996; Canadian Criminal Justice Association, 2000

[61] Ibid

[62] Royal Commission on Aboriginal People. (1996.) A report on Aboriginal people & criminal justice in Canada: Bridging the cultural divide. (pp. 31) Ottawa: Canadian Communication Group Publishing.

[63] Aboriginal Issues Branch. (1999). Demographic Overview of Aboriginal Peoples in Canada and Aboriginal offenders in Federal Corrections. Correctional Service of Canada.

[64] Moore, John; Low, T & F. Berland. (2002). Metis Offenders in British Columbia: An examination of needs in the institution and upon release. (Pg. 42-45) Correctional Service of Canada: Forum on Corrections Research.

An important issue in the discussion of Métis over-representation in the criminal justice system is the why factor. Why are so many Métis people coming into conflict with the law? What is the root cause behind all this offending?

One has to consider the socio-economic conditions of Métis people in Saskatchewan. While the 2001 census shows that Métis social conditions are improving, we are still lagging behind that of non-aboriginal people. This clearly identifies a need to improve Métis people's social conditions. For real justice reform to take place the causes of the over-representation needs to be addressed. Improving the social conditions will in turn reduce the over-representation of Métis people in the federal and provincial correctional systems.

GEOGRAPHIC DISPLACEMENT OF MÉTIS OFFENDERS

Provincial and Federal correctional facilities are located in areas far removed from Métis communities in Saskatchewan. A common concern is the geographic displacement of Métis offenders. Most correctional facilities are located in urban centres in Saskatchewan such as Prince Albert, Regina, Saskatoon and North Battleford. Métis offenders come from locations throughout the province so when incarcerated they are transferred to one of these facilities. This then removes them from their communities as well as from their families. This can cause many hardships as noted in the research conducted by MFCJS in the "Needs of Métis Offenders in Saskatchewan."

In this research project, MFCJS staff heard many important concerns from the inmates, family members and correctional staff. A common concern was the lack of communication available between offenders and family members. This can be attributed once again to poverty, because many offenders could not afford long-distance phone cards to contact their families. In turn the inmate's families could not afford long distance, as many identified finances as an area causing them difficulty in their life. As a result, there is little or no communication between the inmate and their family, inevitably family breakdown or dysfunction occurs. The distance between correctional facilities and the families also makes travel to visit inmates difficult if not impossible in many cases. Many inmates' families become economically impacted by incarceration, due to leaving only one income to support a whole family.

This also makes the transition or reintegration efforts of the inmate even more difficult. Every effort should be made in both provincial and federal correctional facilities, to ensure that inmates are able to communicate with their family. Kinship and family relationships are at the core of Métis identity, and as such every effort should be made to allow for incarcerated individuals to maintain a connection to their family and to their community.

LACK OF MÉTIS-SPECIFIC PROGRAMMING

> "There's a concern about the lack of cultural-based programming while in the correctional system and they're also concerned about the amount of counseling within the correctional system that relates to a holistic approach, as opposed to just allowing them to continue to learn to become better criminals…."
>
> Métis Youth Council Presentation

Currently in both provincial and federal correctional institutions there is little focus placed on the needs of Métis offenders. Existing programs group First Nations, Inuit and Métis offenders into one homogenous category - Aboriginal. This may be attributed to Section 35 of the Canadian Constitution that recognizes the definition of Aboriginal to include: *Indian, Inuit and Métis Peoples of Canada*. However, what is often overlooked by the generalization of the term *Aboriginal* is that each Nation is distinct and unique in their culture, language and traditions. This also identifies a need for Métis-specific programming that reflects the Métis Nation's identity, culture and values. Research must continue to be conducted examining Métis offenders needs and Métis women offender's needs. We must examine the criminogenic profile of Métis offenders, programming needs, and cultural and spiritual needs, to gain a better understanding of Métis offenders.

Current programming in Provincial and Federal correctional facilities focuses mainly on "Aboriginal" programming or primarily on First Nations cultural and spiritual practices. Current Aboriginal programming includes: access to First Nations Elders, sweetgrass/sage ceremonies and prayers, sweat lodge and sundance ceremonies. While this is a positive step in terms of correctional programming, this is not sufficient in regards to Métis inmates. While some Métis inmates felt comfortable accessing these programs, other inmates did not. The imposition of a culture on a group who is not of that culture, is inappropriate and is a form of discrimination. As a result, Métis-specific programming should be developed to meet the needs of all "Aboriginal"offenders, not just one specific group.

The "Needs of Métis offenders in Saskatchewan" research project was a joint project between the Métis National Council, Métis Family & Community Justice Services Inc and Correctional Service of Canada. This project examined the needs of federally incarcerated Métis inmates. This involved interviews with Métis male inmates, their family members and federal correctional employees. The inmates clearly identified the need for Métis specific programming in the institutions as well as in the community upon their release. Incarcerated Métis offenders identified interest in the following programming:

- Métis History;
- Access to Métis Elders;
- Métis Culture, worldview, values system and belief structure;
- Métis spirituality;
- Geneology;
- Métis rights; and
- Other programming specific to individual inmates needs.

In response to these identified needs, the Métis Nation – Saskatchewan through its respective affiliates must take the lead in the development of institutional Métis specific programming. It is imperative that Métis specific programming be developed and implemented based on the Métis offenders' needs. Any research must be inclusive of the Métis correctional inmates in partnership with the Métis Nation- Saskatchewan and respective government departments.

We also must rally our politicians to place pressure on Corrections and Public Safety and Correctional Service of Canada to begin developing and implementing Métis specific programming in federal and provincial correctional facilities. Under Section 79 of the Corrections and Conditional Release Act, CSC must provide access to Aboriginal programming in the federal correctional facilities. At this time, the main focus is on First Nations programming. CSC must accommodate the needs of Métis inmates and as such we have the responsibility to remind them of their legal responsibilities.

REINTEGRATION

The picture is equally bleak for the reintegration of Métis offenders. There is a real deficit in programming in the area of reintegration of Métis offenders. Many inmates spoke of the lack of awareness and access to community support services. This can be a major impediment in successful reintegration and can contribute to recidivism rates of Métis offenders. Inmates in provincial and federal correctional facilities spoke of the difficult transition from incarceration upon release. Many inmates spoke of difficulty in obtaining:

- Community support and network;
- Housing
- Employment
- Education;
- Mental Health Services;
- Drug and Alcohol programs,
- Living skills programming; and
- Individual and Family Counseling

It must be recognized that some offenders may not want to participate in release programs. Assistance needs to be available to all offenders in all areas. In the Needs of the Métis Offender research project, many inmates noted employment was most beneficial in successful reintegration efforts. We need to provide employment skills and training to offenders in the institutions so that they may be more successful in the job search upon release. They also noted access to education as a need. One Métis inmate spoke of his frustration in accessing services:

> "I would like to get into a trade when I am out of here...Last time I was out [of jail] I got into school, I applied for funding to be able to go to school...they told me that they could not help me because I was too much of a risk, because I was a con.... "
>
> Saskatchewan Penitentiary Inmate

The high rate of Métis incarceration is unacceptable. This calls for the development of a targeted integrated approach between the Métis Nation – Saskatchewan, the provincial and the federal governments. The Métis Nation affiliates such as Métis Family & Community Justice Services Inc., Métis Employment and Training of Saskatchewan Inc., Métis Addictions Council of Sask. Inc, and other affiliates need to develop a five- year strategic plan, in partnership for the reintegration of Métis offenders and youth in conflict with the law.

Many Métis offenders are frustrated because of the barriers they face upon their release to the community. This is an unnecessary barrier to the already difficult transition. It is imperative to the reintegration process that there be community and family support. Intensive 24-hour support should be made available to Métis men and women upon their release. This may be a role of a family support worker, youth worker or justice worker. However, due to the lack of money and resources in community-based organizations, this may overwhelm already overworked community-based workers. Proper resources are needed at the community level so that they may provide adequate services to their clients.

Programs that have become valuable to Aboriginal offenders in the community are: Community training residences, PAGC Healing Lodge, Okimaw Ohci – Maple Creek Women's Healing Lodge, Meyowin – Pinegrove and Building a Nation. They are models of programs that have made a difference for many Métis people integrating back into their communities. More of this is needed. It is important to note that many of these programs are not found in Métis communities. We need to establish such programs in our communities that incorporate Métis experiences and realities. The Community Training Residence is run by Elizabeth Fry and should be run by an Aboriginal carrier. A short-term goal could be transferring responsibility of the Community Training Residence in Saskatoon to Métis Nation – Saskatchewan similar to the one in Prince Albert for men.

Reintegration residences and Métis halfway houses need to be established and properly resourced in Métis communities as well as in urban areas with a high Métis population. These residences should also offer reintegration programming to all offenders upon release. Programming could include:

- Reintegration programming;
- Holistic, Family-healing programs;
- Intensive family counseling;
- Releasing support groups;
- Access to Métis Elders; and
- Métis Culture, History classes.

Métis affiliates need to get together and develop an integrated strategy for offenders in their release planning along with the offenders, their family and community. Affiliates should assist the offenders in accessing services in the areas of employment, education, job-building skills and training, mental health services to drug and Alcohol programming.

Métis Family & Community Justice Services Inc. is in the process of developing a five-year strategic plan. The five-year strategic plan will include short-term and long-term goals such as the development of youth healing centers, family healing centers and a Métis-specific healing lodge. Métis communities play a pivotal role in the development of the five-year plan, as they must be ready for the initiatives put forth in this submission.

COMMUNITY RESPONSIBILITY

> "Justice and Corrections has to be the administrative responsibility of the Métis people in this province. If Métis people are to heal, it has to be done through our own institutions and/or in partnership with the government."
>
> Métis Nation - Saskatchewan Youth Council Presentation

Métis people are suffering from the effects of colonization, oppression, racism, systemic discrimination and abandonment from the provincial and federal government. Organizations commonly hear, "there is no money", and are struggling to provide services with declining resources and increasing need. The statistics concerning Métis youth, especially in the North, are an example of the dysfunction and social dysphoria experienced in these areas. Community-based organizations and workers are overwhelmed, overworked and overburdened. Coupled with under-funding, it is difficult to call for them to take responsibility of their community. However, it is the community that understands their needs, desires and aspirations. Individuals need to regain responsibility of their communities and decide what is best for them. The role of the Métis Nation Saskatchewan and its affiliates, are to assist the regions in achieving this. Provincial and Federal government departments should facilitate, provide support and capacity-building activities which will empower communities to take ownership of their collective needs.

Communities can play a large role in defining what corrections and justice mean to them. They also have the right to determine what suits their needs. Community justice committees are key in mobilizing the community in the area of justice and corrections. CJC's roles can include supervision of young offenders, parole, probation and their reintegration into the community. Section 84 of the Corrections and Conditional Release Act allows for Métis offenders to serve their sentences out in the community. CJC's can assist offenders in the reintegration process through this mechanism.

Community Justice Committees can also be involved in intervention and prevention activities in their communities. Development and implementation of such programming could impact on the incarceration rates of Métis people. We must have strong prevention programs at the earliest age possible. Prevention programs could include education on legal rights and responsibilities. Educating people on their rights is about empowering people to take responsibility to themselves, their families and communities. Métis Elders need to begin mentorship programs and educate children, youth and community about their traditional roles and responsibilities. Understanding and practicing traditional roles, responsibilities and teachings can assist communities in their healing journey. All such activities will have a positive impact on incarceration rates and as such, reduce Métis participation in correctional facilities.

Métis offenders require a supportive network from family and especially the victim. In some instances, the offender will be returning to their home community. Due to the small size of Métis communities, it can make reintegration difficult for the offender and the victim, because crimes cause ripple affects throughout the whole area. Due to this inter-connectedness, an offender's community should also support the offenders in his/her efforts to heal. A formal process is required to do this. These processes are called healing or restorative justice practices, namely: sentencing circles, healing/sharing circles, mediation and other alternative dispute resolution methods. Although the terminology may be new to Métis communities many of these practices are derived from past traditional Métis worldviews on living a balanced, harmonious, relationship centered lifestyle.

The return of the old and an introduction of new methods is a move in the right direction and one that individual communities will have a role in determining their readiness and preferences. This development will take place according to each community's desires and needs for community based offender re-integration. Due to the differences between communities, differing definitions of corrections will occur often as corrections involves more than incarceration.

There is a dilemma in desire to have both safe communities and the return of offenders back into the community. What needs to be understood is that these men, women and youth, will eventually be returning home. The terms of their return is entirely up to the community and by being involved in their release planning, there is much more opportunity to have input into the plans for the offenders release.

Any process that provides for healing, reparation and restoration of the whole community will benefit all. The preparation needed by community to support alternative conflict resolution methods will help lay a solid foundation. Resources are required such as financial and human resources that will help build capacity in defining and implementing corrections and justice initiatives in Métis communities. Providing communities with information, education and financial resources is key to the successful reintegration of Métis offenders in Saskatchewan. In turn, Métis offenders will be far more successful in their reintegration efforts with the full support of their community. Community designed and driven programs are the most successful programs and although the area has not been fully explored there are examples of community successes such as: The Community Development Corporation in La Loche; the Regina Alternative Measures Program and the Kapachee Training Center in Fort Qu'Appelle.

Although these programs receive government funding their success is attributed primarily to the strong community design and driven elements. Although government support is needed for community programs to be successful, the role of the federal and provincial governments, concerning corrections/justice based justice initiatives, should be one of facilitation, not subjugation. Government needs to let go of the control of communities to that of supporting them.

The information above is available throughout government departments however; these services are not easily accessible by communities. Information noted above should be readily available and easily accessible to community-based organizations. In some places, this information is available such as the Aboriginal Services Kiosk and community directories. Often the information found in these services is outdated. As well, many communities do not have access or awareness of such programs.

MÉTIS WOMEN OFFENDERS

According to a September 1999, "Profile of Incarcerated Women offenders," there were 75 Aboriginal women federally incarcerated which accounts for 21.1% of the women offender population. Métis women currently account for 10% of provincially incarcerated women in Saskatchewan.[65] A caution note to this number because it is a self-reported statistic. This could mean that the number is inaccurate, as some may not self-declare as being Métis. Pine Grove institutional data outlines the socio-economic conditions of provincially incarcerated women:

- 27% of were incarcerated for property crimes;
- 38% were incarcerated for non-compliance;
- 44% have a grade 7-9, 38% have grade 10 – 11 and only 12% have high school;
- All 588 women were unemployed at time of incarceration.

Incarcerated Métis women face a multitude of issues upon incarceration: poverty, racism, sexism, low education levels, unemployment, underemployment, childcare issues, physical, sexual, emotional abuse issues, low self-esteem, domestic violence and parenting issues. The institutional data suggests that the most common charge is non-compliance or breach of probation. The next common charge was property crimes, which can be attributed to poverty-based crimes. Women are being criminalized for being poor. Low education levels and almost 100% unemployment in Pine Grove correlates to low socio-economic standing. Often women are not heard because of their low economic standing. People with little economic clout are often the least listened to. Great consideration must be paid to the low socio-economic conditions of Métis and First Nations women in this province.

Many women are committing crimes to feed their family or to feed their addictions. This clearly points to the need to re-evaluate incarceration whether it is a feasible sanction for petty crimes such as breach of conditions and poverty based crimes such as shoplifting, theft and fraud. Many of these sentences could be served in the community, allowing families to stay together. The ability to provide diversion, mediation and alternative dispute resolution services should be considered for women. People need to be held accountable for their crimes, but there are more humane ways of doing this.

Diversion of women's sentences to the community needs to involve one to one counseling, intensive individual and family therapy, budgeting, healing circles, fraud and credit counseling, shoplifting programs, self-esteem classes, access to Métis elders and Métis cultural programming. Institutional programming also needs to provide provincially and federally incarcerated women with job-building skills, education and employment programs. This will go a long way in assisting women with reintegration. A positive program in this area is the Community Training Residence run by the Elizabeth Fry Society. The CTR assists in the transition phase to reintegration. They assist female offenders with life skills, budgeting, safe food handling, banking, literacy and access to cultural ceremonies. This is a positive program and supports the services the Elizabeth Fry provides. However, we would like to run such programs in the future. We also recommend that more Community Training Residences are available in Métis communities and run by a Métis organization.

Métis women offenders require special consideration because of their position in the Métis family. According to the 2001 census, almost half of Métis children living in urban centres are living in single parent households.

> "A total of 54, 735 Métis children, or 65% of the total, lived in a two-parent family, while 27, 955 youngsters, or 33% lived with a lone parent. However, there is quite a difference by area residence. The percentage of Métis children living with a lone parent in urban CMAs is 42%, almost double to proportion of 22% in rural areas. In contrast, 83% of non-Aboriginal children lived in families with two parents, while only 17% lived in a lone-parent family."[66]

---

[65] Pinegrove Institutional Data (2002). Overview of Pine Grove Correctional Centre (Page 3).

[66] Statistics Canada. 2001 Census: analysis series: Aboriginal people of Canada: A demographic profile. www.statcan.ca/cgi-bin/downpub/freepub.cgi. Date accesses: October 21, 2003.

In many instances, mothers are the primary caregivers in single parent households. When a mother is incarcerated, the impact on the family is enormous. In the case of a single parent mother the effect is insurmountable. In many cases their children are thrust into circumstances beyond their control and become wards of the state with no extended family to care for them. This brings them into contact with two separate, yet equally confusing systems - the criminal justice system and the child welfare system. The Elizabeth Fry Society's presentation clearly outlines this dilemma:

> "When a woman is sentenced her child frequently becomes the unintentional victim of her incarceration. This child is usually placed with family members or in foster care. Many women have experienced abuse and neglect by these same family members or are themselves products of the foster care system. It is not unusual for a women to decide that it is safer to trust her children to the care of the family rather than to take a chance on losing the children to the foster care system. It is not unusual for a woman to be in a state of despair and unable to focus on anything but her children throughout her incarceration. Children of all ages, but particularly the very young, experience feelings of abandonment and fear. Their mother is gone from their life with little or no warning. Usually their home and everything familiar has disappeared. The stress of being separated is very traumatic but reuniting can be equally difficult."

As discussed above, every effort should be made to keep the Métis family together. Incarceration, especially in the case of women, should be used only when the women pose a threat to themselves, their family or the community. Many of the sentences served by women are property related or breach of conditions, and could be diverted to the community. Intensive family therapy should be recommended when needed. This may assist in healing the community, one family at a time. Similar programming should be available for reintegration of Métis women offenders.

Another excellent program is the Meyoyawin Circle Program at Pine Grove. The Holistic Self Care Program is for women who have experienced sexual abuse, alcohol and drug addiction, family violence, and low self-esteem due to destructive lifestyles. This program addresses areas of child abuse, victimization, addictions, cultural loss and spiritual deprivation. This program is the precursor to the Children's Visiting Program. The goal of the Children's Visiting Program is to develop and strengthen the relationship between incarcerated mothers and their children through culturally relevant holistic approaches. This program uses restorative justice approaches to rebuild and connect incarcerated mothers with their children. This allows for families to remain connected throughout their sentences. We recommend that such programming be implemented in federal correctional facilities for both men and women.

PAROLE

Métis reintegration needs were examined extensively in an earlier section so as not to be redundant, please refer to the previous section for this. According to the Aboriginal Issues Branch – CSC, "Demographic Overview of Aboriginal Peoples in Canada and Aboriginal Offenders in Federal Corrections," in 1999, "aboriginal offenders comprised 17% of total federal offenders population in 1998/99 compared to 13.1% of the federal day parole population, 6.4% of the federal full parole population, and 16.2% of the statutory release population." Discussion of parole outcomes over the last five years also found, "a comparison of Aboriginal and non-Aboriginal offenders of parole outcomes over the last five years demonstrates that Aboriginal offenders were":

- 7% more likely to be granted an unescorted temporary absence; but
- 4% less likely to be granted federal day parole;
- 5% less likely to be granted provincial day parole;
- 13% less likely to be granted federal full parole; and
- 21% less likely to be granted provincial full parole.

Research shows that Aboriginal offenders are over-represented in the criminal justice system and are under-represented in parole. Federally incarcerated Aboriginal offenders are also over-represented in the warrant expiry date and statutory release categories.[67] This means that far more Aboriginal offenders are serving out their whole sentence rather than being released on parole.

A number of inmates noted concerns regarding access to a parole hearing. They stated that they were denied access to their mandatory parole hearings or were ill advised to waive their hearing. Every effort should be made to inform inmates of their parole eligibility and assistance should be offered. We recommend that all Métis inmates have elder-assisted parole hearings. This may make the process easier for inmates and their family members. As well, the National Parole Board needs to have Métis Elders available for these hearings.

Métis representation on the National Parole Board is necessary. Métis representation on the parole board may assist the parole board in understanding the Métis community, access to Métis resources and community services as well as understanding Métis culture, history and contemporary issues facing the Métis people of Saskatchewan.

WE RECOMMEND THAT:

Cross-Cultural Awareness Training

1. In consultation with Métis Nation – Saskatchewan and appropriate affiliates, a Métis-specific cross-cultural training package be developed and delivered by the Métis Nation to police services, R.C.M.P, court employees, corrections (federal and provincial) and any other interested parties. Often cross-cultural training focuses solely from a First Nation perspective or pan-Aboriginal approach. The Métis are a distinct culture with their own traditions, beliefs and language. Cultural Awareness training must account for this.
2. Development of assessment tools that will be used to monitor and screen out police employees who exhibit racial intolerance. Development of a policy relating to disciplinary action and dismissal of those public employees that ignore racism and human rights.
3. Immediate dismissal of corrections employee who display racist tendencies.

Employment Equity

1. Saskatchewan Corrections and the Correctional Services of Canada (CSC), in consultation with Indian and Métis organizations, immediately implement new and innovative employment equity programs to achieve greater aboriginal participation at all levels. A minimum target would be the percentage of aboriginal staff equal to the percentage of aboriginal offenders served. (Linn Report)
2. Greater attention be paid to recruitment and retainment of Métis people employed in the justice system.
3. Pre-employment programs need to be delivered by GDI, DTI to train more Métis people to work within the justice system. More resources need to be directed to this area and existing programs be strengthened and supported such as the Corrections Officer Training Program at DTI.

---

[67] National Parole Board. (2001). Cultural Profile of the Federal Offender Population. Retrieved on October 5, 2003 from www.npb-clnc.gc.ca

Institutional Programming

1. Development and implementation of Métis-specific cultural programming focusing on traditional Métis values, awareness and beliefs in provincial correctional facilities. This may include:
   - Access to Métis Elders for one on one counseling,
   - Métis language classes,
   - Personal development classes,
   - Healing talking circles,
   - History of the Métis Nation and;
   - Genealogy

Reintegration

1. Recommend that, in partnership with MFCJS that Métis-specific reintegration initiatives be created for Métis offenders that will include: life skills, budgeting, drug and alcohol programs, counseling, housing, education and/or employability of offenders.
2. Recommend that funding be increased for more community training residences for men and women in Métis communities.
3. It is recommended that funding, support and assistance be provided for offenders upon release.

Métis Women in Conflict with the Law

1. Due to the absence of adequate material on Métis women offenders we recommend that funding be provided to Métis Family and Community Justice Services to examine the needs of provincially incarcerated Métis women and the effect of incarceration on their children.
2. Development and implementation of Métis-specific female cultural programming focusing on traditional Métis values, awareness and beliefs in provincial correctional facilities. This may include:
   - Access to Métis Elders for one on one counseling,
   - Métis language classes,
   - Personal development classes,
   - Healing talking circles,
   - History of the Métis Nation and;
   - Genealogy
3. Since women are the cornerstone of the Métis Nation and of the family, it is recommended that more programming, specifically designed for Métis women be created that focuses on: healing circles, provide information on the cycles of abuse, personal development and life skills, education on sexual reproductive health, AIDS, HIV, Hepatitis C; alcohol and drug abuse counseling, family counseling (particularly children who are effected by incarceration); and individualized programming based on need.

4. Due to the fact that children of incarcerated Métis women require counseling, support and access to their mothers, we endorse the Meyowewin Program at Pinegrove.
5. Funds should be made available to family members of those incarcerated to enable them to maintain a connection to their family and community, because of the challenges of travel, long distances charges etc. These funds will be administered by MFCJS and will be distributed based upon need and not want.
6. It is recommend that an alternative to incarceration should be considered for mothers with children.
7. Institutional and reintegration programming must focus on empowering women. Along with a strong component of traditional healing and counseling, programming should also focus on education and the development of employment skills for incarcerated women. This will result in greater independence and self-esteem building thereby decreasing further recidivism due to poverty based crimes.

National Parole Board

1. We recommend that there be Métis representation on the National Parole Board.
2. All Métis offenders' parole hearings should be Elder assisted with Métis Elders available upon request.
3. Greater utilization of S81 and S84 for Métis Offenders based upon community capacity and readiness.
4. More funding and resources be made available to community training residences and halfway houses in urban and rural communities with a high Métis population.

CRIME PREVENTION

The Saskatchewan crime rate is the highest in Canada. In 2001 the rate was 74% higher than the national rate.[68] These numbers are even higher in northern Métis communities. The high rates of crime, offences and victimization in Métis communities identify an urgent need for the development of crime prevention programs in Métis communities across Saskatchewan. The current response to crime and offending is enforcement, punishment and incarceration. It does not call for restoration to individuals or communities. What can be done to assist individuals, families and communities, from coming into conflict with the law? What could avoid contact with the system? Prevention and intervention activities relating to crime and offending is a reasonable and healthier way of dealing with crime. Currently, "the direct costs of crime to the justice system are nearly $10 billion a year."[69] Investing in crime prevention has many benefits, which are often overlooked, as most time and resources in the criminal justice system are invested in punishment, incarceration, and "rehabilitation." Studies and research have found that prevention activities early in life are more effective then existing approaches of crime control. There are a number of long-term benefits from investment in crime prevention and intervention activities such as reduction in crime level, reduced victimization, community empowerment and cost effectiveness.

According to the Department of Community Resources and Employment website, "Studies have shown that prevention and early intervention programs for children return $7 to the public for every $1 invested." This number is quite staggering when we consider that the 2002/2003 Saskatchewan Justice and Corrections and Public Safety Criminal Justice expenditures was $229.6 million. If the provincial and federal government invested $32 million yearly for a ten to twenty-year span, can you imagine the benefits? Investing in crime prevention and intervention activities will also have long-term benefits across all social systems and sectors in the government such as: Department of Community Resources and Employment, Saskatchewan Health and other related departments.

WHAT IS CRIME PREVENTION?

Crime prevention is defined as, "the anticipation, recognition and appraisal of a crime risk and the initiation of some action to reduce that risk."[70] This is a commonly accepted definition of crime prevention, however we find this definition to be too restrictive. Another definition that fits for communities is, "Crime prevention is the promotion of those attitudes, activities and behaviors that create and maintain safe and vital communities where crime and delinquency cannot flourish. Crime prevention practices provide a foundation for community justice initiatives and embrace the principles of restorative justice."[71]

Linden states that there are two approaches to crime prevention. Social development programs that are "aimed at reducing the number of potential offenders by addressing the social and economic factors which cause crime. Social development programs can include:

- Early Childhood education
- Parental skills training
- Youth employment
- Recreation
- Education
- Employment and Training Programs
- Community Policing

---

[68] Canadian Centre for Justice Statistics (CCJS), *Uniform Crime Reporting Survey*, various years, as found in Department of Justice and Corrections and Public Safety Submission to The Commission on First Nations and Metis Peoples and justice Reform. (Page, 16). (2003)

[69] Linde, Rick. Crime Prevention in Aboriginal Communities. University of Manitoba.

[70] Ibid, Page 3

[71] American Probation and Parole Association. Crime Prevention. http://www.appa-net.org/about%20appa/crimeprevention.htm. Accessed on: October 31, 2003

The second approach is, "reducing opportunity by improving the guardianship of potential crime targets or by making targets less vulnerable." Such as:

- Improving security and safety of the physical environment
- Neighborhood Watch programs
- Theft and alarm devices such as car alarms and the "club"
- Preventive Policing

While both of these approaches have merit, we feel that more emphasis should be placed on social development programs. While reducing opportunities to offend is a good short-term goal, Métis communities need more than this. For crime prevention activities to be effective, we must include recommendations that will improve the lives of Métis across all social sectors, addressing root causes of crime such as poverty, unemployment, low education levels, and other socio-economic dysphoria experienced by Métis people involved in the criminal justice system. We need to be pro-active instead of being reactive. We need to prevent placing individuals in a situation where committing crime is their only option.

> "Crime Prevention is reconnecting youth and families with their culture. It stems from a lack of cultural identity, poverty, dysfunctional families and exposure to unhealthy lifestyles. Crime prevention is a reconnection of youth and people with hope..."
>
> Crime Prevention Roundtable Participant

Crime Prevention is about responsibility. As noted in previous sections, Métis people had defined roles and responsibilities. It is the Elders and parents role to pass norms, mores and acceptable conduct down to the children. The 'Rules of the Buffalo Hunt" and kinship structures of the Métis ensured transmission of values, beliefs and acceptable forms of behaviour. These rules were there to regulate individual, family and community behaviour. However, these roles and activities are not happening in communities across Saskatchewan. Colonization, residential schools, and paternalistic government policies have effectively taken away these responsibilities and the dysfunction experienced in communities is the product.

> "Aboriginal values, healing circles, that sort of thing, can that be translated into society in general? Yes, it can, because you're talking about values. And if you teach values, perhaps more so than rules, you'd be a long way towards preventing crime."
>
> Crime Prevention Roundtable Participant

We have heard the term, "it takes a village to raise a child." While this may seem to be a cliché it is a very valid point. Prior to colonization and erosion of Métis values and social structures, Métis communities did in fact follow this belief. Everybody had a role and was taught proper conduct and acceptable behaviour. This was how Métis communities regulated behaviour as everyone played a role. When a child was not in school, if a community member saw this, they sent the child to school. If a child was misbehaving and their parents were not around, a community member would get after them. Today, this in not happening for many reasons discussed in previous sections such as; colonization, family breakdown/fragmentation, addictions and other social dysfunction.

Throughout the consultation process, children, youth, Elders and community-based organizations noted the absence and lack of parenting extensively. This identifies a need for an in-depth, targeted and multi-sectoral approach to restoring parenting skills in Métis communities. This is not to say all Métis parents are not doing their job, just some parents need assistance, support and education in this area.

Current family support programs come in the form of monetary compensation such as social assistance and child tax credits. While improving the social conditions and low-income levels of families at-risk is important, they require targeted programming aimed at parenting skills, budgeting, life skills, employment and job-readiness skills, communication skills, and other wellness focused supports. Support services and parent networks need to be established in communities. A possible solution is the development of traditional parenting classes taught by

Métis Elders in the community. Elders can teach about traditional roles and responsibilities, parenting skills and counseling services when appropriate.

There are many positive crime prevention programs in existence across Saskatchewan. However, many crime prevention programs are struggling with lack of capacity, short-term funding, high staff turnover, lack of training, political interference and lack of evaluation and accountability. Linden noted that many "crime prevention programs are ineffective because of lack of planning, poor implementation, and an absence of evaluation."[72] We recommend that the Métis Nation – Saskatchewan, Government of Saskatchewan and Government of Canada, assist by facilitating communities in the development, implementation and evaluation of crime prevention in Métis communities across Saskatchewan. This should involve working with Métis communities to "identify the nature and extent of crime and disorder problems; helping to prepare applications for funding; providing training for community members; and coordinating services.[73]

Métis crime prevention programs need to be community developed, designed and delivered based on their needs. The most successful programs are community driven. Programs need to respect community uniqueness, what works in Saskatoon, may not work in La Loche. Métis crime prevention programs need to be culturally appropriate, holistic, social development oriented and sustainable.

FUNDING

Métis organizations and community-based programs are facing a severe lack of funding or under-funding of programs. Throughout the consultation process, the community spoke overwhelmingly of the lack of funding, inadequate levels of funding, and lack of sustainability because of short-term funding. While recognizing the fiscal constraints that everyone is facing, there is a real need to focus funding on programs that work. Often, the best programming in communities are community driven, developed and implemented programs. Long-term investment is required at the community level to empower them to design, deliver and implement crime prevention programming based on their communities needs. The federal and provincial governments need to support communities in this endeavor. Governments need to move away from controlling to facilitating change in Métis communities.

> "How many government workers does it take to process a $10, 000 cheque? You could go a lot of places on that, on how many it takes…if we had a simple guideline for determining why that community needs $10, 000 and a simpler way of processing it, you could have better accountability because the community would understand what [is wanted]…so why does the community lose their focus? Well, they're inundated with administrative restrictions."
>
> Restorative Justice Roundtable Participant

Current funding cycles are not conducive to good business. Many organizations and people spoke of conflicting funding cycles, "pilot projects", and short-term funding. Many organizations are spending the bulk of their time looking for money, writing proposals or fundraising to cover the funding shortfall. This takes away from the services that they are trying to provide. Funding requirements and project evaluation were also identified as a serious issue for community people. Often organizations are spending great amounts of time filling out paperwork, reporting and auditing. While we recognize and support the need to be accountable, the current system is ineffective. Therefore, we recommend that a more community friendly application process that includes streamlined accountability measures be adopted. This could entail integrated funding applications for all government departments.

Many community members discussed the difficulty in accessing money for community-based programming. It is increasingly more difficult to find programming dollars and many organizations are struggling to find money to continue programming. Participants at the Crime Prevention Roundtable stated that some organizations are spending 25 – 50 % of their time looking for money, writing proposals and filling out paperwork. They also noted the problems inherent with the expectations from quick fixes and fast turn around pilot/short term funded projects. These expectations place very unrealistic expectations on communities and as a result a high number of programs have failed because of the absence of support, lack of financial and human resources and sporadic funding cycles.

---

[72] Linde, Rick, Crime Prevention in Aboriginal Communities. University of Manitoba.

[73] Ibid.

In order to support communities, funding for Métis community justice programs needs to flow from a stabilized source. A strong, integral program that clients have confidence in requires long term, stable, realistic funding commitments. This need is in direct conflict with the existing funding programs received in Métis communities. A two-year time frame to establish and promote is very difficult to obtain. Within the justice and social services field, users of programs have a history of mistrust of systems and consequently it takes a long time to build a trusting relationship with the client. This is hard to do when programs are shut down after two years. Along with stability, communities need the freedom to learn by making mistakes, growing and flourishing (just like governments and human beings make mistakes, Métis people should also be able to build upon previous mistakes) without having programs immediately cut.

This is not to mean that communities do not want to be accountable, in fact it is the foundation of community development. However, an analysis of whom we are being accountable to is needed. Communities need to be accountable to the people first and foremost, not to government treasury boards. Our Métis institutions are fully committed to being accountable, to be transparent in financial and organizational governance. The federal and provincial governments need to be held to the same standards that communities must. This involves being accountable to the communities and the responsibilities that they are shirking by providing substandard program dollars which they then expect to yield amazing results.

Facilitation and support also involves more than financial resources. It includes community support, encouragement and assistance. Government support can include more than just resources such as: training in community justice programs; board development and training; resource material; secondments (from government departments to community-based organizations); proposal writing; information on programs across Saskatchewan (Community Justice Programs) and advocacy amongst other government departments.

POSITIVE PROGRAMS

There are many existing positive crime prevention programs in Aboriginal communities across Saskatchewan. We need to support and invest more time, human resources, and financial resources into these worthwhile activities:

- Prince Albert Outreach Program Inc
- STC Urban First Nations Services Inc. Safe House Program
- EGADZ Operation Help
- Rainbow Youth Centre
- Saskatoon Native Theater
- Street Culture Kidz
- Youth Outreach Counselors
- White Buffalo Youth Lodge
- Operation TARGET
- Culture Camps

- Eastern Region II Melfort Youth Empowerment Centre
- Western Region I Meadow Lake Youth Centre
- Elders Mentorship Program
- Infinity House
- Annual South Bay Youth Conference

While many of the above mentioned programs are successful, it is a constant struggle to sustain these programs. More money and support needs to be made available to these programs. We have heard that we need to invest in our youth. Supporting these programs is a huge part. Analysis of the money that these programs are saving should be conducted. They are providing many valuable services with very little money and support.

WE RECOMMEND THAT:

1. Long-term sustained investment is essential, and investment needs to be more than just financial such as human resources, time and other capacity building endeavors.
2. Community friendly application process that includes streamlined accountability measures.
3. The Métis Nation – Saskatchewan, Government of Saskatchewan and Government of Canada, assist communities by developing, implementing and evaluation of crime prevention in Métis communities across Saskatchewan. This should involve working with Métis communities to identify the nature and extent of crime and disorder problems; helping to prepare applications for funding; provide training for community members; and coordinating services. Support given to communities should be by facilitating, not controlling.
4. In Aboriginal communities, a major emphasis should be placed on social development (not welfare) programs in order to help create healthy individuals living in healthy communities. This will require coordination among several government departments. DCRE, HRDC, METSI, CPS, MNS, MFCJS.

IMPLEMENTATION

The designing of an implementation vehicle is critical to ensure that the Commission on First Nations and Métis Peoples and Justice Reform's recommendations are implemented. The need for an implementation vehicle is outlined in the Commission's terms of reference: "The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations."[1]

Throughout the consultation process, community members voiced a number of concerns pertaining to implementation. We were reminded that numerous commissions that have gone before us, such as the Royal Commission on Aboriginal Peoples, Aboriginal Justice Inquiry, and Alberta Task Force, have failed. While they made many excellent recommendations, many were not implemented. This could be attributed to a lack of an implementation vehicle, to ensure that recommendations were implemented. This is why the development of an implementation vehicle is key to the success of the Commission on First Nations and Métis Peoples and Justice Reform. The Métis people of Saskatchewan want to see action and this is only possible through the implementation of recommendations. This will be the true measure of the Commission's success.

Métis Family & Community Justice Services has been working in partnership with the Commission on First Nations and Métis Peoples and Justice Reform. The Commission has been mandated by the Government of Saskatchewan *"...to review the justice system with the intent of devising solutions to overcome systemic discriminatory practices and address attitudes based on racial or cultural prejudice."* The Commission has identified four areas in which improvements must be made. They include:

- Levels of incarceration must be reduced
- Levels of victimization must be reduced
- Improved levels of community safety
- Levels of offending must be reduced

MFCJS agrees that all of these areas need to be improved as Métis people are disproportionately represented in all of the above areas. However, for real change and improvements to be made, we must include recommendations that will improve the lives of Métis across all social sectors, addressing root causes of crime such as poverty, unemployment, low education levels, and other socio-economic dysphoria experienced by Métis people involved in the criminal justice system. In order to make these recommendations a reality, all partners, Métis Nation – Saskatchewan, Federation of Saskatchewan Indian Nations, Government of Saskatchewan and Government of Canada, must work together and make a long-term commitment to change.

Secondary to this, all partners must change the way they think and approach matters that relate to the Métis and First Nations people of Saskatchewan. There must be recognition of Aboriginal governments at the negotiating tables by the provincial and federal governments. The provincial and federal government must "park" the jurisdictional battles and negotiate with Métis and First Nations governments on a Nation-to-Nation basis. The development of true, authentic partnerships is a must. This is difficult when one or two specific groups hold all power and the purse strings. The power imbalance that currently exists needs to be addressed. Therefore, the inclusion of Métis people in the designing of the implementation vehicle is integral to the success of the Commission on First Nations and Métis People and Justice Reform and the eventual implementation of most if not all of their recommendations.

There must be change! Our consultations with the Métis people heard "loud and clear" that the Métis are "sick and tired" of being an economy for non-aboriginal society. Métis represent a small percentage of the provincial population and an extraordinary percentage within all provincial and federal correctional institutions. Accordingly, we represent a small population base yet our Northern Métis receive a large amount of social assistance funding. This must be reversed, and if political will is not negative to change. MFCJS cannot be expected to accept some token implementation vehicle lacking integrity and credibility.

---

[1] *Commission on First Nations and Métis People and Justice Reform (2002).* Building on Success. Interim Report – May 30, 2002. (pp. 13)

VISION

The Vision of Métis Family & Community Justice Services Inc. is *"Communities working together for our children."* The mission is to; *"To promote and rebuild the Métis Nation and their communities by supporting cultural and spiritual needs and empowering family centered social and justice programs. To oversee and coordinate the direction and development of Métis social and justice services."*

The vision and mission of Métis Family & Community Justice Services provides us with guiding principles based on a strong belief in Métis culture and heritage. It is with one foot in the past that we strive to move forward for the betterment of our children, families and communities. The power of our Nation can be found in the strength of our families and it is imperative that we are forward looking as to secure a future for our children while continuing the journey of strengthening our families today. It is within this tenet that MFCJS works in partnership with the Commission on First Nations and Métis Peoples and Justice Reform.

The Métis people of Saskatchewan have no faith in the current legal system. It is important to note that we cannot refer to the legal system as the justice system, as a Métis elder pointed out in a dialogue because, *"there is no justice in the justice system."* In my travels, I have encountered great apathy as many fear that this commission will not be able to meet their expectations, as many commission have previously failed before. The main reason why many previous commissions such as the Royal Commission on Aboriginal Peoples, Aboriginal Justice Inquiry, etc., are seen as failures is because there were no proper or concrete implementation structures in place to ensure that the governments followed up on their recommendations. This is an "out" for the provincial and federal government, as with no implementation vehicle or monitoring processes in place, this allows them not to implement recommendations that are they are not in agreement with. We cannot let the federal and provincial governments off the hook as they have a moral and legal responsibility to Aboriginal people as recognized in Section 91(24) of the Canadian Constitution.

As well, it is important that we gather momentum and support for the Commission, as we must gain political will. We will require strong political will, from all partners, to ensure that these recommendations are followed through. There must be *"Champions for Change,"* at both the political and community level. However, the most critical issue is the development of an implementation vehicle. There **must** be some form of implementation, or this Commission will fail, as did its predecessors. The development of an implementation vehicle **must** be inclusive and respectful of the Métis Nation – Saskatchewan governance structures as well as the Métis community. Any implementation discussions or negotiations should be based on a government to government (or Nation to Nation) relationship with all parties involved that include: MNS, FSIN, Provincial and Federal government.

There are many important factors to consider in the designing of an implementation vehicle:

1. **Independence** – any implementation vehicle will require a high level of independence from all levels of government including Métis and First Nations government. While they will be involved in the process in many ways, the Commissioner must be a completely independent body similar to that of the Children's Advocate, Ombudsman, or Human Rights Commission.

2. **Aboriginal Driven** – While recognizing the need for the implementation vehicle to be independent, the vehicle must be driven by the Aboriginal people of Saskatchewan. Equal representation of First Nations and Métis, while recognizing the need for ad hoc (non-voting) federal and provincial senior government officials to sit at the table but not to control the process.

3. **Long-term, Sustainable Funding** – Reforms to the justice system will not happen over night and will require an on-going funding base recognized in legislation as to avoid possible derailment if a new political party is elected. While many short-term recommendations can be realized soon, monitoring that those recommendations continue is essential. As well, we must look at the big picture, as effecting any real social change will require a great deal of time and hard work.

4. **Accountability** – This is a very important factor, as monitoring and evaluation of implementation is integral to all levels, and the vehicle itself must be transparent and accountable to all parties involved. The Aboriginal communities will prove their model to be an asset and a highlight to all justice systems in Saskatchewan and Canada.

Métis Family & Community Justice Services, Inc., on behalf of the Métis people of Saskatchewan, recommends the establishment of a Saskatchewan Aboriginal Justice Commission. The implementation model that is best suited to our organization would be the establishment of an Aboriginal Justice Commission as recommended by the Aboriginal Justice Inquiry of Manitoba. This model provides for equal representation of all parties involved in the process, accountability and most importantly, legislative authorities at both the federal and provincial levels of government.

> "We believe that an Aboriginal Justice Commission of Manitoba should be established by federal and provincial legislation and by appropriate processes of the Aboriginal people of Manitoba. We suggest that the commission have a board of directors made up of equal numbers of Aboriginal and governmental representatives, with an independent person, acceptable to all parties, as chairperson. Aboriginal representatives should include status Indians, Métis, non-status, and representatives of Aboriginal women and urban Aboriginal people."[75]

Métis Family & Community Justice Services Inc. choose to support the Aboriginal Justice Inquiry of Manitoba's model for implementation because it calls for federal and provincial legislation, as well as recognition of Aboriginal governance. We also suggest that establishment of a board of directors with representation from Métis and First Nations people. This includes recognition of Métis Nation – Saskatchewan, Federation of Saskatchewan Indian Nations as well as other Aboriginal community members, organization, Elders, women and youth. We also recognize the need to have provincial and federal government representatives at the table. However, we recognize the need for ad hoc (non-voting) federal and provincial senior government officials to sit at the table but not to control the process. We feel this is necessary as discussed above; there exists a real power imbalance between governments.

A major function of the board of directors would be to select an Aboriginal Justice Commissioner, who would be acceptable to all partners involved in the process. However, as this is an Aboriginal issue, we would like the Commissioner to be Métis or First Nations. We will support the appointment of a Commissioner be it Métis or First Nations. The appointed Commissioner or board of directors may also hire support staff, based on what is best for First Nations and Métis people of Saskatchewan. The Manitoba Aboriginal Justice Inquiry also went on to recommend the following as roles for the Implementation Commission, which we endorse:

- *We believe that any implementation of those recommendations and any consequent negotiations should be overseen by the Office of the Aboriginal Justice Commissioner, whose primary role would be to ensure that Aboriginal-government negotiations occur in as fair and productive a manner as possible and that any assistance necessary to overcome areas or points of disagreements is provided*
- *Enter into discussions with Aboriginal people to determine their wishes with respect to the various recommendations.*
- *Recommend the form and method of the implementation of recommendations.*
- *Monitor the implementation of the recommendations.*
- *Report to governments, Aboriginal people and the general public on the progress of implementation.*
- *Monitor the progress of affirmative action programs.*

---

[75] Aboriginal Justice Inquiry of Manitoba, 1991

- *Receive concerns and complaints of any nature for Aboriginal people and forward them to the appropriate department or agency for attention, and monitor the result.*
- *Mediate Aboriginal concerns or complaints with governments or agencies.*
- *Become involved in any issue involving Aboriginal people.*
- *Advise government on Aboriginal concerns and recommend appropriate action.*

The above roles outlines the possible mandate of the Saskatchewan Aboriginal Justice Commission. However, these are merely suggestions as to the mandate. Respect must be paid to existing Métis and First Nation governance structures and as such, any subsequent negotiations regarding the establishment of the implementation vehicle and mandate should happen at existing bilateral and tripartite tables. An alternative to this is the existing Implementation working group, which can do the preliminary planning of the model. However, proper protocol and procedures must be followed, with the final decision resting with the Métis Nation Annual General Assembly and Provincial Métis Council.

Some drawbacks of this model could be jurisdiction, political will and political interference. In order for this model to be successful, it will require hard work, political will and fair and equitable partnerships. Ex: Federal and Provincial governments willing to negotiate with MNS, FSIN on a government-to-government or Nation-to-Nation basis. Overall, this will require commitment from all partners to be prepared to negotiate and to find common ground.

WE RECOMMEND THAT:

1. That an implementation be designed and implemented effective April 1, 2004, to ensure that the recommendations that the Commission on First Nations and Métis Peoples and Justice Reform provide are implemented and monitored.
2. That legislation be drafted by all of the partners, Métis Nation – Saskatchewan, Federation of Saskatchewan Indian Nations, Government of Saskatchewan and the Government of Canada, that support the mandate of the Saskatchewan Aboriginal Justice Commission.
3. Financing of the implementation vehicle not be at the expense of community organizations. MN-S financing will be administered by MFCJS.

BIBLIOGRAPHY

Aboriginal Initiatives Branch. (1999). *Demographic Overview of Aboriginal Peoples in Canada and Aboriginal Offenders in Federal Corrections*. Correctional Service of Canada. Retrieved on February 27, 2003. http://www.csc-scc.gc.ca/text/prgrm/correctional/abissues/know/10_e.shtml

Aboriginal Nurses Association of Canada. (1997). *It takes a Community – a resource manual for community-based prevention of FAS and FAE*. Health Canada, It takes a community National Working Group. Minster of Public Works Government Services Canada.

Adelberg E, Currie C (Eds.) La Prairie, (1987) Native women and crime in Canada: A theoretical model. In the too few to count: *Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers

American Probation and Parole Association. *Crime Prevention*. Retrieved October 31, 2003, from http://www.appa-net.org/about%20apa/crimeprevention.htm.

Barkwell, L.J., Dorion, L. & Prefontaine, D.R. (1999). *Resources for Métis Researchers*. Winnipeg: Louis Riel Institute of the Manitoba Métis Federation.

Bianchi, H. (1994). *Justice as Sanctuary: Toward a New System of Crime Control*. Bloomington: Indiana University Press.

Brizinski, P. (1993). *Knots in a String*. (2nd Ed.). Saskatoon: Extension Division University of Saskatchewan.

Campbell, M. (1973). *Halfbreed*. Toronto: McClelland and Stewart.

Canadian Centre for Justice Statistics. (2003) *Uniform Crime Reporting Survey*, various years. In Department of Justice and Corrections and Public Safety Submission to the Commission on First Nations and Métis Peoples and Justice Reform. Government of Saskatchewan.

Canadian Race Relations Foundation. (2003). *CRRF Facts about …Racism and Policing*. Retrieved June 16, 2003, from: http://www.crr.ca/EN/MediaCentre/FactSheets/ FactAboutPolicing.pdf

Canadian Criminal Justice Association. (2000). *Aboriginal People and the Criminal Justice System*. Retrieved on April 22, 2003, from http:///www.ccja-acjp.ca/en/aborit.html

CBC News Online. (2003). Who was Neil Stonechild? In *Indepth Backgrounder: First Nations*. Retrieved: May 6, 2003 from http://www.cbc.ca/news/indepth/firstnations/stonechildneil.html

Chartier, C. (1999). Aboriginal Self-Government and the Métis Nation. In J. Hylton (Ed.), *Aboriginal Self-Government in Canada*. (2nd Ed.) Saskatoon: Purich Publishing.

Chartier, C. (1994). Métis Perspectives. In Gosse, R, J. Y. Henderson & R. Carter, (Ed.), *Continuing Poundmaker and Riel's quest : Presentations made at a conference on Aboriginal Peoples and Justice*. Saskatoon: Purich Publishing.

Chartrand, P. & Whitecloud, W. (2001). *Final Report of the Aboriginal Justice Implementation Commission*. Winnipeg: Aboriginal Justice Implementation Commission.

Commission on First Nations and Métis People and Justice Reform (2002). *Building on Success. Interim Report – May 30, 2002.*

Corrigan, S. W., & Barkwell, L. J. (Eds.). (1991). *The Struggle for Recognition: Canadian Justice and the Métis Nation.* Winnipeg: Pemmican Publications

Dumont, J. (1993). Justice & Aboriginal People. In Royal Commission on Aboriginal Peoples (Eds.). *Aboriginal people & the justice system.* (pp. 68). Ottawa: Canada Communication Group – Publishing

Federation of Saskatchewan Indian Nations. (2003). *FSIN Alternative to Non-Violence Gang Initiative.* (pp. 45).

Government of Saskatchewan. *New Directions for Youth Services: The Saskatchewan Youth Services Model.* Saskatchewan Health, Education, Social Services and Justice.

Graham, J., B. Amos. & T. Plumptre. (2003). *Principals for Good Governance in the 21St Century.* Policy Brief No. 15. Institute on Governance.

Griffiths, C. T, B. Whitlaw & R. Parent. (1999). *Canadian Police Work.* Toronto: ITP Nelson.

Gunn – Allen, P. (1986). *Sacred Hoop: Restoring the Feminine to Native American Traditions.* Boston: Beacon Press. (pp. 45).

Hamilton, A.C., & C.M. Sinclair. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba.* Winnipeg: Aboriginal Justice Inquiry.

La Prairie, C. (1995). *Seen but not heard: Native people in the inner city.* Ottawa: Minister of Public Works & Government Services of Canada.

Law Commission on Canada (1991). *Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice.* Ottawa: Law Commission.

Linde, Rick. (nd) *Crime Prevention in Aboriginal Communities.* Aboriginal Justice Inquiry of Manitoba.

Linn, Patricia (1992). *Report of the Saskatchewan Métis Justice Review Committee.* Regina: Saskatchewan Justice.

McCaskill. (1983). As quoted in: Monture-Angus, P. (1996). Lessons in Decolonization: Aboriginal overrepresentation in the Canadian Criminal Justice System. In Long, D.A. & O.P. Dickason, (eds.). *Visions of the heart.* Toronto: Harcourt Brace. (pp. 289).

McCold, P. & B. Watchel. (1997). *Community is not a Place: A New Look at Community Justice Initiatives.* Retrieved on December 12, 2001 from http://www.restorativepractices.org/Pages/albany.html.

Métis Family & Community Justice Services Inc. (1998) *The Wisdom of Honouring our Elders Conference Report.*

Métis National Council. (2002). *Snapshot of the Nation.* Ottawa: Métis National Council.

Métis Nation – Saskatchewan. (2003). Retrieved March 31, 2003 from www.Métisnation-sask.com.

Moore, J.P, Low, T. & Berland F. (September 2002). Métis Offenders in British Columbia: An examination of needs in the institution and upon release. *Forum on Corrections Research [Journal Article in archives]*. Retrieved December 18, 2002 from http://www.csc-scc.gc.ca/text/pblct/forum/v14n3/v14n3a13e.pdf

National Parole Board. (2001). *Cultural Profile of the Federal Offender Population*. Retrieved on October 5, 2003 from http://www.npb-clnc.gc.ca.

Ontario Federation of Indian. (2002). *Aboriginal approached to Fetal Alcohol Syndrome/Effects*. (pp. 15).

Pinegrove Institutional Data.(2002). *Overview of Pinegrove Correctional Centre.*

Royal Commission on Aboriginal People. (1996). *A Report on Aboriginal people & criminal justice in Canada: Bridging the Cultural Divide.* Ottawa: Canadian Communications Group – Publishing.

R.C.M.P. (2003) *Submission to the Commission on First Nations and Métis Peoples and Justice Reform*. Royal Canadian Mounted Police "F" Division.

Saskatchewan Executive Council News Release. *Justice Commission Established*. Justice 301-859. November 2001.

Saskatchewan Human Rights Commission (2003). *Erasing Racism*. Retrieved on March 2003 from http://www.gov.sk.ca/shrc/ErasingRacism.pdf. (pp. 1)

Statistics Canada. (2003). *2001 Census: Analysis Series: Aboriginal peoples and Canada: A demographic profile.* Ministry of Industry.

SECTION 2:

WORKING TOGETHER FOR SAFER COMMUNITIES

SUBMISSION TO THE
COMMISSION ON FIRST NATIONS
AND MÉTIS PEOPLES AND JUSTICE REFORM

BY SASKATCHEWAN JUSTICE AND
SASKATCHEWAN CORRECTIONS
AND PUBLIC SAFETY

JANUARY 2003

TABLE OF CONTENTS

INTRODUCTION 1

Introduction to the justice system 2

Federal government responsibility for First Nations and Métis peoples 4

Cost-sharing agreements 4

Self-government and self-determination 5

HISTORIC OVERVIEW 6

Community-based justice development 7

CRIME RATES IN SASKATCHEWAN 11

Crime, victimization and offending 11

Social and historical factors that influence offending 13

STRATEGIC APPROACHES 15

Building community ownership and capacity 15

Community ownership

Community capacity building

The importance of community capacity building

Developing partnerships 17

Adapting the criminal justice system 20

Establishing positive relationships

Reducing institutionalized barriers

Dealing appropriately with complaints

Increasing the number of Aboriginal employees in the justice system

Increasing the number of services delivered by Aboriginal organizations

Ensuring that the justice system respects the cultural practices and traditions of Aboriginal peoples

Improving the effectiveness of services 27

Restorative justice and alternative measures

Community policing

Providing effective programs for offenders

Responding to interpersonal violence and sexual exploitation

Responding to the needs of victims

Improving justice services in northern Saskatchewan

EMERGING ISSUES . . . 38
CONCLUSION . . . 39
REFERENCES . . . 41

INDEX OF CHARTS

Chart 1: Saskatchewan Justice and Corrections and Public Safety Criminal Justice Expenditures, 2002-2003 . . . 3
Chart 2: *Criminal Code* Crime Rates, Selected Saskatchewan Communities 2001 . . . 12
Chart 3: Northern Crime Rates 2001 . . . 12

INDEX OF TABLES

Table 1: Federal-Provincial Contributions to Criminal Justice Programs, 2002-2003 . . . 4
Table 2: Provincial Community-based Justice Programs 2002-2003 . . . 8
Table 3: Community-based Justice Programs for Youth . . . 10
Table 4: Improvements in the Social Well-being of Saskatchewan Aboriginal Peoples . . . 14
Table 5: The Components of Community Capacity Building . . . 16
Table 6: Characteristics of Successful Partnerships . . . 18
Table 7: Percentage of Aboriginal Police Officers in Selected Saskatchewan Police Services as of November 2002 . . . 24
Table 8: Elements that Reduce Youth and Adult Reoffending . . . 31
Table 9: Risk Profiles of Offenders in Custody in November, 2002 . . . 32
Table 10: Risk Profiles of Offenders in the Community in November, 2002 . . . 32

INTRODUCTION

All people have in common the desire to live in safe, secure communities. Saskatchewan Justice and Saskatchewan Corrections and Public Safety share that goal. Realizing this vision requires that our departments provide programs and services that support communities in addressing the complex issues of crime, victimization, and offending. It also requires responding to the negative influences of serious issues such as substance abuse and family violence.

These negative influences, which are particularly challenging in some Aboriginal communities, can lead to Aboriginal people becoming involved in the justice system - both as victims and offenders. In addition, the level of victimization and offending in some Aboriginal communities and the highly publicized nature of some incidents creates an environment where it is more difficult to build trust and positive relations between Aboriginal and non-Aboriginal peoples.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are using four strategic approaches to address crime and community safety:

- building community ownership and capacity to address the factors associated with offending and victimization;
- developing partnerships;
- adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal peoples and meets their needs for safety and security; and
- improving the effectiveness of services to victims, offenders and communities.

In many places in this document we speak of community in terms of a geographic area, such as a town, city or region. We also use the term to refer to people who are connected through networks of relationships. For example, many people belong to personal communities that include friends, family, coworkers, and members of spiritual or recreational associations. For many First Nations peoples, communities also include personal connections to bands and reserves.

This introductory section describes stakeholders in the criminal justice system, the role of the federal government in addressing the issues of Aboriginal peoples, the financial contributions of the federal and provincial governments to the criminal justice system, and the role of Saskatchewan Justice in negotiations about self-government and self-determination.

Section II describes how the departments have addressed the problems of crime, victimization and offending over the past three decades. Section III describes the problem of victimization and offending in Aboriginal communities and provides an explanation about why this occurs. Section IV discusses the four strategic approaches and, finally, Section V discusses the emerging issues of gangs and organized crime.

INTRODUCTION TO THE JUSTICE SYSTEM

The justice system includes a number of federal, provincial and municipal institutions that carry out different roles and responsibilities. While these organizations work together, they have varying degrees of independence. For example, both the federal and provincial governments appoint judges but governments cannot tell judges what they should decide in a case. Further, only judicial authorities can discipline judges. This independence is vital to ensure that the criminal justice system is free from political interference.

Under section 91 of the *Constitution Act*, the federal government is responsible for enacting criminal law, such as the *Criminal Code* and the *Young Offenders Act*, and for enacting laws about the procedures used in criminal cases. The federal government may also pass other federal laws that must be enforced by the justice system. In addition, the federal government is responsible for operating penitentiaries and appointing superior court judges.

Under section 92 of the *Constitution Act*, the province is responsible for the administration of justice in Saskatchewan. This includes prosecuting *Criminal Code* offences as well as administering the courts and providing policing and other services such as victim services. The province is also responsible for administering custody sentences less than two years for adults, all youth sentences and for appointing provincial court judges.

The Charter of Rights and Freedoms is a part of the *Constitution Act, 1982*. It is very important in criminal law because it sets out the constitutionally protected rights and freedoms all Canadians enjoy. All laws in Canada must conform to the Charter, which guarantees:

- the right to be free from unreasonable search and seizure;
- the right not to be arbitrarily detained or imprisoned;
- the right to trial within a reasonable length of time;
- the right on arrest to retain and instruct legal counsel; and
- the right to be presumed innocent of an offence until proven guilty.

Under the federal *Indian Act*, First Nations governments can develop band bylaws for local community regulation and may, by agreement with the federal or provincial government, provide a range of justice services.

The federal Justice Department is responsible for administering the federal courts, which include the Federal Court, the Supreme Court of Canada, and the Tax Court. The federal government appoints judges to these courts and to the superior courts in the provinces. In Saskatchewan, the superior courts include the Court of Queen's Bench and the Saskatchewan Court of Appeal. The federal Justice Department also supports community justice programs in Saskatchewan through the Aboriginal Justice Directorate and crime prevention programs through the National Centre for Crime Prevention.

The other federal departments or agencies that have responsibility for justice issues include the Solicitor General, Correctional Service of Canada, and the National Parole Board. The Solicitor General of Canada is responsible for the Royal Canadian Mounted Police (RCMP).

The Correctional Service of Canada is responsible for inmates serving sentences of two years or more. The National Parole Board holds parole hearings for inmates serving jail sentences in federal correctional institutions. In addition, the National Parole Board is responsible for holding hearings for provincial inmates in Saskatchewan because there is no provincial parole board. The Correctional Service of Canada is also responsible for supervising offenders on parole.

Saskatchewan Justice is responsible for ensuring that federal and provincial laws are enforced and that justice is administered appropriately within the province. In terms of the criminal justice system, this includes administering the provincial policing contract with the RCMP, appointing judges to the Provincial Court, funding the Saskatchewan Legal Aid Commission and administering the Saskatchewan Aboriginal Courtworkers Program, Public Prosecutions, and community justice, victims services, policing and crime prevention programs.

Saskatchewan Corrections and Public Safety is responsible for adult inmates serving sentences of two years or less. The Department is also responsible for maintaining provincial correctional institutions and youth custody facilities, providing alternative measures for youth, and supervising offenders serving sentences in the community.

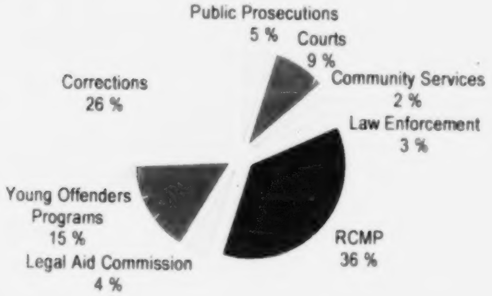
The law and the administration of justice are continually evolving. For example, the *Young Offenders Act* will be replaced by the *Youth Criminal Justice Act* on April 1, 2003. This federal legislation will have a major impact on how youth justice services are delivered in Saskatchewan. Saskatchewan Justice, Corrections and Public Safety, Health, Learning, and Social Services made a presentation to the Commission on First Nations and Métis Peoples and Justice Reform in August 2002, about the impact of the new legislation and the work that is being done to implement the Act.

Chart 1 (below) outlines the costs of the criminal justice programs and services provided by Saskatchewan Justice and Saskatchewan Corrections and Public Safety for 2002-2003.

For more information about these services, please refer to the Saskatchewan Justice website at www.saskjustice.gov.sk.ca and the Saskatchewan Corrections and Public Safety website at www.cps.gov.sk.ca.

Municipal governments provide policing services in larger municipalities under provincial legislation, and operate traffic or municipal by-laws courts. Health regions, schools and school boards, and community-based organizations also support and facilitate the justice system. These organizations provide programs to deal with issues such as addictions and mental health and participate in initiatives that prevent crime and build healthy families and communities.

CHART 1: SASKATCHEWAN JUSTICE AND CORRECTIONS AND PUBLIC SAFETY CRIMINAL JUSTICE EXPENDITURES, 2002 - 2003*



(includes Saskatchewan Police Commission, Office of the Complaints Investigator, and the Coroner)

* total criminal justice expenditures are $229.6 million
Source: Saskatchewan Finance, *Estimates 2002-2003*.

FEDERAL GOVERNMENT RESPONSIBILITY FOR FIRST NATIONS AND MÉTIS PEOPLES

The federal government has a unique fiduciary relationship with Aboriginal peoples. Accordingly, the federal government has a special obligation in its dealings with First Nations peoples to act in their best interest.

The federal government's relationship with First Nations peoples is also grounded in treaties. As Professor John Borrows, from the University of Victoria Law School, discussed at the Office of the Treaty Commissioner Justice Symposium in October 2002, the treaties are a foundation on which discussions about justice and many other issues between First Nations and non-Aboriginal peoples can build.

Developing the reserve system and sending Aboriginal children to residential schools are some of the central policies in Canadian history that had substantial effects - and unfortunately, often negative impacts - on Aboriginal peoples. As such, the impact of these decisions should be addressed as a national responsibility. These issues are particularly important in Saskatchewan. Aboriginal peoples form a large and growing part of the provincial population. According to 1996 Census data, Aboriginal peoples account for 11% of the Saskatchewan population, compared to about 5% for Alberta, almost 12% for Manitoba and 3% nationally.[1]

The federal government has generally interpreted its responsibilities as applying to First Nations peoples under treaties and to the Inuit, but not to First Nations peoples who live off-reserve or to the Métis. This is a matter of great concern to the province, both because many members of First Nations choose to live off-reserve and because there is a significant Métis population. Saskatchewan believes that all Aboriginal peoples should receive the same levels of service under the Indian Act - regardless of their status and whether they live on- or off-reserve.

COST-SHARING AGREEMENTS

Many justice services in Saskatchewan are provided as a result of financial contributions from both the federal and provincial governments. Table 1 summarizes the contributions to various cost-shared criminal justice programs.

TABLE 1: FEDERAL-PROVINCIAL CONTRIBUTIONS TO CRIMINAL JUSTICE PROGRAMS, 2002 - 2003

Program	Provincial Funding $	Federal Funding $	Total Funding %	Percentage Contributed by the Federal Government
Saskatchewan Aboriginal Courtworker Program	590,000	500,000	1,090,000	50%
Community Justice Programs	2,160,000	1,200,000	3,360,000	36%
Saskatchewan Legal Aid Commission	6,100,000	2,800,000	8,900,000	31%
RCMP Provincial Policing	57,078,000	26,019,000	83,097,000	30%
RCMP Municipal Policing	20,043,000	7,180,000	27,223,000	Either 30% or 10%, depending on the population of the municipality
First Nations Policing	6,600,000	6,000,000	12,600,000	48%
Young Offenders	35,439,000	7,600,000	43,039,000	17.7%
Victims Services	3,200,000	75,000	3,275,000	Less than .02%

---

[1] The figures from the 2001 census will be available in spring 2003. However, current estimates based on the 2001 census suggest that the Saskatchewan population 18 years and older is 723,665. The 2001 Aboriginal population 18 and older is estimated to be 60,800, and the non-Aboriginal population is 662,865.

While there is federal cost-sharing for young offenders programs, the amount of the federal government's contribution has been capped since the late 1980s. As costs have increased greatly since that time, the percentage of funds contributed by the federal government has been steadily shrinking.

Given the fiduciary responsibility the federal government has for First Nations peoples, it provides cost-sharing for the federal First Nations Policing Policy and Aboriginal Justice Strategy. These initiatives have been very helpful in developing Aboriginal justice programs in Saskatchewan. The First Nations Policing Policy involves First Nations and Tribal Councils in deciding what type of policing is most appropriate for their communities. The Aboriginal Justice Strategy provides cost-shared funds to a number of community-based justice programs. Continued federal support for these initiatives is critical.

SELF-GOVERNMENT AND SELF-DETERMINATION

Saskatchewan acknowledges that section 35 of the *Constitution Act, 1982* recognizes and affirms the Aboriginal rights of three distinct categories of Aboriginal peoples - Indian, Métis, and Inuit. Saskatchewan also recognizes that it must honour the treaties entered into between the First Nations and the Crown and the inherent right of First Nations to govern themselves within the *Constitution Act*. Self-government refers to the ability to exercise jurisdiction or law-making authority over people and territory. Self-determination, on the other hand, is a broader concept. The Supreme Court of Canada described it as the right of a people to "freely determine their political status and freely pursue their economic, social and cultural development".[2]

Aboriginal justice reform must build upon and develop within the broader framework of self-determination and self-government. While the province supports the self-determination of Aboriginal peoples, we are interested in changes that are fair and equitable to both Aboriginal and non-Aboriginal peoples. The changes should not result in uncertainty over how the law would be applied. Changes should also be affordable and in the public interest. Further, it is important that a strong accountability framework be in place for the entire criminal justice system.

Saskatchewan Justice is involved in discussions with the federal government, the Federation of Saskatchewan Indian Nations (FSIN), and the Meadow Lake Tribal Council (MLTC) where self-government and related issues are being negotiated on-reserve.

The Department is also involved in discussions of a non-jurisdictional nature with the Métis-Nation Saskatchewan (MNS). Self-government is tied to a land base and, as the Métis people do not have a recognized land base, the Province is not in a position to negotiate Métis self-government. In January 2002, Saskatchewan proclaimed *The Métis Act* to formally recognize the economic and cultural contributions of Métis peoples and institutions. Through the Act, the Province has committed itself to work with the Métis people to address practical, non-rights based initiatives related to capacity building, land issues, harvesting and governance.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are dedicated to negotiating how the province's responsibility for administering justice can work with the Aboriginal delivery of justice services such as community corrections, policing, victims services and custody facilities or reintegration agreements for the early release and supervision of Aboriginal offenders. The departments are prepared to discuss the full range of ideas that could be considered under self-determination, which may include self-government approaches in some instances. We participate in discussions about self-government and self-determination within the mandate provided by Cabinet and on the premise that the *Criminal Code* and the *Charter of Rights and Freedoms* will continue to apply to all citizens of Saskatchewan.

---

[2] *Reference re Secession of Quebec* [1998] 2 S.C.R. 217.

HISTORIC OVERVIEW

In looking forward, it is important to understand from where we have come. This section of the submission describes how work within the justice system in Saskatchewan has evolved since the early 1970s.

Around 1970, there was a growing awareness in Saskatchewan and throughout Canada about Aboriginal rights and concern about the high number of Aboriginal people in the justice system. The Indian Justice of the Peace Program, the Indian Probation Officer Program and the Indian Special Constable Program were developed at that time to involve more Aboriginal people in working as police, probation officers and justices of the peace.

The Native Courtworker Program, a federal/provincial program, was also developed at that time to help Aboriginal people accused of a crime understand their legal rights and the court process. The program was cancelled in 1987, but reinstated in 1995 as a joint initiative between Saskatchewan and the federal government.

Between 1980 and 1990, Saskatchewan was involved in a number of national discussions, such as the 1985 study with the FSIN and Justice Canada, *Reflecting Indian Concerns and Values in the Justice System*. These discussions were important because they set the stage for the federal government, the province and First Nations governments and organizations to discuss justice issues.

Between 1991 and 2002 there have been many further efforts to develop justice system reforms. For instance, the Indian Justice Review Committee and the Métis Justice Review Committee were established in 1991 to make recommendations about delivering criminal justice services to Indian and Métis peoples within the context of the existing justice system. The recommendations resulted in many policy changes and program developments, such as:

- increasing the number of community justice and alternative measures programs;
- reinstatement of the courtworker program;
- enhancing the availability of Legal Aid in the north and increasing the participation of Aboriginal peoples in the Legal Aid Commission board;
- providing cross-cultural training to prosecutors and Legal Aid staff;
- developing First Nations policing agreements, working with the RCMP and municipal police services to increase the number of Aboriginal police officers, and ensuring ongoing Aboriginal representation on the police commissions in Saskatoon, Regina and Prince Albert;
- holding court on-reserve in many First Nations throughout the province, working to increase the number of Aboriginal Justices of the Peace and court staff, and establishing the Northern Cree Circuit Court; and
- expanding correctional programs designed for Aboriginal inmates, expanding access to Elders in correctional centres, and opening the Prince Albert Grand Council Healing Lodge.

Ultimately, Saskatchewan Justice accepted all but four of the Justice Review Committees' recommendations.[3]

---

[3] The four recommendations that were not accepted include:

- That the RCMP and the municipal police services develop a tool to assess the use of cross-cultural skills in police work, and that performance reviews for police officers would evaluate the use of these skills. This was not implemented because there is no standardized assessment system for the municipal police forces, and each police service is responsible for developing its own criteria.
- That provincial and federal government departments consider whether it would be feasible to amalgamate the complaints process against the RCMP and municipal police forces into a single review agency. This was not implemented because the federal government preferred to maintain a separate complaints mechanism for the RCMP.
- That *The Legal Aid Act* be amended to establish regional advisory bodies that would have Aboriginal representation in order to provide community input into Legal Aid programs and policies. While the recommendation was not accepted, there is a Legal Aid Commission that determines policy about delivering Legal Aid in Saskatchewan, and there has been a strong component of Aboriginal representation on the Legal Aid Commission Board.
- That the RCMP would not transport judges into northern communities. This recommendation was not implemented because the cost of transporting judges separately would be prohibitive.

Saskatchewan Justice developed a four-year Aboriginal Justice Strategy in 1993, which was approved as part of the Government of Saskatchewan's Aboriginal Policy Framework in 1994. The Aboriginal Policy Framework is a broad policy framework to focus government activities and policies on partnerships, mutual respect and harmony to improve relations between Indian, Métis and non-Aboriginal peoples and to encourage greater participation of Indian and Métis peoples in the life of the province.

In 1994, Saskatchewan made a submission to the Royal Commission on Aboriginal People which suggested that Aboriginal justice reform must build on the potential for self-government and address the complexity within communities. It also suggested that practical action was needed at four levels: building bridges to meet the self-government and self-determination aspirations of Aboriginal peoples, crime prevention and reduction, making the justice system more responsive to the needs of Aboriginal peoples, and employment equity and race relations within the justice system. The strategic approaches outlined in this 2003 submission build on these themes, which have formed the foundation for the Departments' work for almost a decade.

COMMUNITY-BASED JUSTICE DEVELOPMENT

During the past decade, Saskatchewan Justice adopted a community-based approach that focuses on involving communities in identifying issues, deciding how to address them and accessing resources. This approach began in the 1970s when Corrections started working with communities to deliver fine option and diversion programs.

Government became more involved in a community-based approach to justice in the mid-1980s, partly because the coming into force of the Young Offenders Act in 1984 spurred the development of youth justice programs. Saskatchewan Social Services provided the first funding to a community-based justice program in 1984 to the John Howard Society of Saskatchewan for youth diversion. Saskatchewan Justice provided the first funding for an adult community-based justice program to Saskatoon Community Mediation Services in 1987.

Saskatchewan Justice became much more focused on a community-based justice approach after 1993. For example, the first funding to a community justice program that focused on Aboriginal peoples was provided to the Regina Aboriginal Human Services Co-operative by Saskatchewan Justice, in partnership with Saskatchewan Social Services and the Saskatchewan Indian and Métis Affairs Secretariat, in 1994.

Since these modest beginnings, a range of community-based justice programs have been developed. Tables 2 and 3 describe the community-based justice programs that are currently supported by Saskatchewan Justice and Saskatchewan Corrections and Public Safety. As the tables indicate, there has been a significant amount of work done to develop partnerships with Aboriginal and community-based organizations and to involve Aboriginal and non-Aboriginal communities in delivering justice programs.

TABLE 2: PROVINCIAL COMMUNITY-BASED JUSTICE PROGRAMS 2002-2003

Program	2002/03 Budget $$	Program availability
Victim Services		
◆ Police-affiliated victims services programs	1,238,100	17 programs provide service to over 80% of the province with 320 volunteers serving 16,000 victims
◆ Victim/Witness Coordinators	257,200	Services offered to children and adults in Regina, Saskatoon, and Prince Albert
◆ Aboriginal Family Violence	381,500	8 programs in Regina, Saskatoon, Prince Albert, Yorkton and Battlefords
◆ Aboriginal Resource Officers	250,000	8 officers in Regina, Saskatoon, Prince Albert, Yorkton, La Ronge, and Battlefords
◆ Specialized crisis intervention services	318,000	5 specialized services serving children and women in Regina and Saskatoon
◆ Compensation	400,000	341 victims were awarded compensation.
Policing		
◆ First Nations policing	12,600,000	30 agreements in place with 45 First Nations serving over 75% of on-reserve people, involving 103 RCMP members and 5 members of the File Hills Police Service
◆ Crime prevention	260,000	6 programs in Regina, Saskatoon and Prince Albert
◆ Community police boards	-	Agreements in place with 35 northern municipalities
Aboriginal Courtworker Program		
◆ Courtworker services	1,090,000	27 courtworkers provide service at 76% of court points for over 12,000 clients
Community Services		
◆ Restorative justice programs	1,387,000	Adult alternative measures are offered in Battlefords, Beauval, Big River, Buffalo Narrows, Cumberland, Estevan, Fort Qu'Appelle, La Loche, Lloydminster, Meadow Lake, Melfort, Moose Jaw, Nipawin, Prince Albert, Regina, Saskatoon, Spiritwood, Swift Current, Tisdale, Weyburn, and Yorkton involving 52 caseworkers
◆ Aboriginal community justice programs	2,360,000	Agreements in place with 16 Aboriginal organizations and governments covering 67 First Nations and involving 50 caseworkers. These programs involve crime prevention, restorative justice, alternative measures and supports for victims and offenders.

Adult Corrections		
• Fine Option/Community Service Order programs	284,000	352 agents are contracted to manage these programs, which provide offenders with an opportunity to make restitution to victims and communities. Approximately 65 agreements operate on First Nations reserves.
• File Hills Qu'Appelle Tribal Council Probation Services	50,000	The File Hills Qu'Appelle Tribal Council delivers probation services to nine of the sixteen reserves under their jurisdiction.
• Reintegration Agreements	-	Ten agreements have been signed with First Nations bands to participate in the case management process or in supervising offenders released into their home communities.
• Al Ritchie and Albert Scott Community Service Centres	102,000	Regina Qu'Appelle Community Operations Region has partnered with the police, the Department of Social Services and community groups to offer services within the core areas of Regina.
• Alternatives to Violence	15,000	The Estevan Community Operations sub-office offers this program at the White Bear First Nation.
• Domestic Violence Program	6,500	The Prince Albert Community Operations Region offers this program for clients from the Shoal Lake and Red Earth First Nations.
• Adult Sex Offender Program	52,000	The La Ronge Community Operations Region offers this program for clients from the Lac La Ronge First Nation.

TABLE 3: COMMUNITY-BASED JUSTICE PROGRAMS FOR YOUTH

Program	2002-2003 Total Funding $$	Program Availability
Alternative Measures		
• Restorative Justice Programs	1,260,000	14 programs are operating through partnerships with 5 Tribal Councils, 5 Aboriginal agencies, 4 other community agencies and 3 government offices. Youth alternative measures are offered in Yorkton, North Battleford, Saskatoon, Prince Albert, Fort Qu'Appelle, Regina, La Ronge, Lloydminster, Moose Jaw, Rosetown, Kindersley, Weyburn, Estevan, and Swift Current.
• Fee For Service Providers	22,000	Services are provided in remote rural and northern areas through fee for service arrangements.
Day Programs		
• Day Programs	1,365,000	Day programs are available at the Witchekan Lake, Mosquito, Onion Lake, Lac La Ronge, and Little Pine First Nations. They are also available in Saskatoon, Regina, Lloydminster, Ile-a-la-Crosse, North Battleford, Prince Albert, Meadow Lake, La Loche, Lloydminster, Yorkton and Swift Current.
Cultural Camp Programming		
• Reintegration Programs and Cultural Camp Events	247,000	Reintegration programs operate in North Battleford and Yorkton through the respective Tribal Councils, and in Regina through partnership with Regina Treaty Status Indian Services Inc.

CRIME RATES IN SASKATCHEWAN

While crime occurs in all communities, there are many places in Saskatchewan where the crime rate is very high. These communities, especially some reserves, northern communities and inner-city neighborhoods, have concentrations of people living in circumstances that put them at high-risk to offend and to be victims of crime. Saskatchewan Justice and Saskatchewan Corrections and Public Safety take the view that the high level of crime in Aboriginal communities is directly related to high levels of disadvantage and the unique historical and cultural circumstances that affect Aboriginal peoples. This section of the submission begins by describing the level of crime in Saskatchewan and then explores some of the reasons behind it.

CRIME, VICTIMIZATION AND OFFENDING

Saskatchewan has the highest provincial crime rate in the country. The Saskatchewan crime rate increased by 17% between 1992 and 2001, and the 2001 rate was 74% higher than the national rate.[4] Crime rates are based on complaints of criminal conduct that are substantiated by a police investigation. They do not include all of the crime that actually occurs, since according to surveys, only about half of all crime is reported to the police.[5]

Property crimes accounted for 44% of Saskatchewan's 2001 crime rate, while other *Criminal Code* offences (such as disturbing the peace, mischief, or failure to appear in court) accounted for 43% of the crime rate. While violent crime accounted for only 13% of the crime rate, it is important to note that Saskatchewan's violent crime rate has been steadily increasing over the last two decades. For example, the Saskatchewan violent crime rate increased 8% in 2001, was 47% higher in 2001 than 10 years ago, and almost triple the rate of 20 years ago.[6]

A further examination of the violent crime rate indicates that as many as seven in ten violent crimes involve violence towards intimate partners, friends or family members. In cases of spousal violence, 67% of cases involved a history of domestic violence between the victim and perpetrator. Similarly, most sexual assaults occur against those under 18 and often involve family or acquaintances.

As shown in Chart 2, the crime rates are not consistent across the province. Generally, rates are lowest in the rural, agricultural communities in the south. The major urban cities of Regina, Saskatoon and Prince Albert are in the middle of the graph. The rates tend to be higher in the north, as illustrated on Chart 3, and on reserves. In 1997, the latest year for which we have detailed data focusing on Saskatchewan, the on-reserve crime rate was double the rate in rural and urban areas of the province. The rate for violent incidents was five times higher.

Despite the high crime rates, data on victimization patterns from the General Social Survey conducted by Statistics Canada suggests that most Saskatchewan residents are about as safe as residents in other provinces. However, this is not true for all groups or communities. Saskatchewan's poorest communities experience the most crime.[7]

---

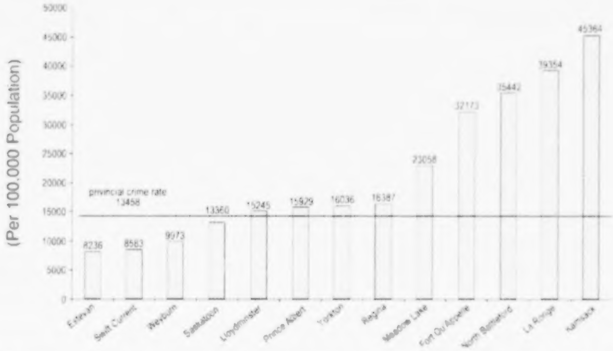
[4] Canadian Centre for Justice Statistics (CCJS), *Uniform Crime Reporting Survey*, various years.

[5] CCJS. (November, 2000). "Criminal Victimization in Canada, 1999". *Juristat* 20 (10), page 11. The 1999 General Social Survey, which is conducted by Statistics Canada, asked a sample of the public about their personal crime experiences. It captured information on crimes reported to the police, as well as those that go unreported. The number of unreported crimes can be substantial. Fox example, the survey estimated that 78% of sexual assaults and 67% of household thefts were not reported to the police. On the other hand, 62% of break and enters, 60% of motor vehicle/parts theft and 46% of robberies were reported, as were 37% of assaults. Based on these findings, we estimate that the public brings roughly half of crime in Saskatchewan to the attention of police each year.

[6] CCJS, *Uniform Crime Reporting Survey*, various years.

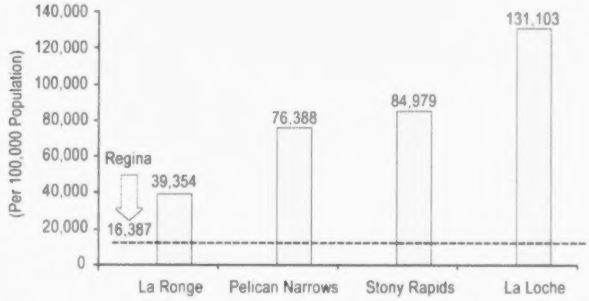
[7] CCJS. (November, 2000). "Criminal Victimization in Canada, 1999". *Juristat* 20 (10).

CHART 2: CRIMINAL CODE CRIME RATES, SELECTED SASKATCHEWAN COMMUNITIES 2001



Source: CCJS, *Uniform Crime Reporting Survey*, 2001. Excludes *Criminal Code* traffic incidents.

CHART 3: NORTHERN CRIME RATES 2001



Crime and victimization is a particularly serious issue in many Aboriginal communities. For instance, Aboriginal peoples accounted for only 10% of the population in Regina and Prince Albert combined but were 47% of the victims of violent crime.[8] Furthermore, between 1994 and 2000, Aboriginal peoples accounted for 55% of Saskatchewan homicide victims as well as 60% of those accused of committing homicide.[9]

There are a large number of Aboriginal peoples in the correctional system. Data from the Adult Corrections Division indicates that 77% of those admitted to Saskatchewan correctional centres in 2001-2002 were of Aboriginal descent. Furthermore, 55% of people under federal correctional supervision in Saskatchewan in 2001 were Aboriginal. In all, about 1 in 7 Saskatchewan Aboriginal men and 1 in 50 Aboriginal women were under the supervision of provincial or federal correctional authorities on any given day in 2000-2001. This is 23 times the per capita rate of non-Aboriginal men and 34 times the per capita rate among non-Aboriginal women.[10] Moreover, while accounting for 15% of those aged 12 to 17, Aboriginal people accounted for 75% of youth in open and closed custody in Saskatchewan in 2000-2001.[11]

---

[8] CCJS. (2000). *Police-Reported Aboriginal Crime in Saskatchewan*. Ottawa: Statistics Canada.

[9] CCJS, *Homicide Survey*, various years.

[10] This figure is calculated from the CCJS adult corrections database using 2000-2001 data, as well as information provided by the Saskatchewan Corrections and Public Safety and the Correctional Service of Canada, Prairie Region, for August, 2001. The population of Aboriginal people is based on the 1996 Census. In 2001, the Saskatchewan Aboriginal population 18 years and older is estimated at 60,800 and the provincial non-Aboriginal population 18 and older is estimated at 662,865.

[11] CCJS. (October, 2002). *Youth Custody and Community Services in Canada, 2000/01*. *Juristat* 22 (8).

SOCIAL AND HISTORICAL FACTORS THAT INFLUENCE OFFENDING

Crime is a complex matter. It is impossible to say that any one factor "causes" crime. However, there is a substantial body of research about the factors related to crime and the characteristics of Aboriginal offenders.

Research indicates that there are many reasons why people commit crimes and come into contact with the criminal justice system. Research also indicates that Aboriginal peoples have a higher rate of offending than non-Aboriginal peoples in terms of the types of crimes that are likely to come to the attention of the criminal justice system and result in a sentence of imprisonment.[12] These crimes primarily include violent offences and administration of justice offences. Aboriginal offenders are also more likely to have been previously involved with the justice system, which increases the likelihood of receiving a prison sentence.[13]

It is generally accepted that broader social factors also influence criminal behavior. Criminal behavior is associated with risk factors such as poverty, lack of education, unemployment, substance abuse, criminal attitudes and relationships with others who are involved in criminal activity. Risk factors exist at the societal, community, family and individual levels. Most of the people who are incarcerated in youth and adult custody facilities have clusters of these risk factors. Aboriginal offenders tend to have the highest level of risks and needs and tend to be lower on all the social and economic indicators, such as level of education and employment history.

LaPrairie's 1995 study of Aboriginal peoples living in the core areas of Winnipeg, Regina, Saskatoon and Edmonton indicated that three-quarters of all persons interviewed had suffered childhood abuse. Furthermore, many inner-city Aboriginal peoples in these centres have unstable home and family lives, tend to move around a lot, and have problems with alcohol abuse. They also tend to have little formal education, to be unemployed and to have few meaningful social connections. In a recent article, LaPrairie (2001) indicates that the Aboriginal population is also generally disadvantaged in terms of income, level of education, the proportion of the adult population that is in the labour force, mobility and the percentage of lone parents.

Since there are large variations in the socioeconomic situations of Aboriginal peoples, not all Aboriginal peoples are at equal risk of offending. Aboriginal peoples who live in urban inner-city areas and the poorest communities and First Nations reserves are the most likely to be involved in the criminal justice system. For example, data in LaPrairie's 2001 article indicates that Saskatoon and Regina are among the cities with the greatest social gaps between Aboriginal and non-Aboriginal populations. With this in mind, it is perhaps less surprising that in 2001, Regina had the highest crime rate and Saskatoon had the second highest crime rate among 25 Canadian census metropolitan areas.

In addition to these social and economic gaps, Aboriginal peoples have experienced some unique historical processes. Policies and institutions, such as residential schools and attempts to discourage the use of Aboriginal languages, sought to assimilate Aboriginal peoples and break down traditional Aboriginal cultures, but did not integrate Aboriginal peoples into the dominant Canadian-European culture and economy. Many Aboriginal peoples have experienced racism and laws or policies that had negative impacts. For example, at one time there were federal laws that suppressed the legal rights of First Nations peoples to assemble for political purposes or hire a lawyer to argue cases against the Crown. There were also laws passed against the practice of spiritual beliefs such as the sun dance. Since the criminal justice system was used to enforce these and other laws and policies, many Aboriginal peoples feel alienated from the criminal justice system. This may be a factor in offending because a justice system only works if citizens accept that it is a legitimate response to crime. For this reason, it is vital that the justice system respect the values of Aboriginal peoples and that Aboriginal peoples have the opportunity to design and deliver justice services that meet the needs of their communities.

---

[12] This is an important distinction as crime rates are based on incidents reported to the police. Some types of crime, such as assaults, are much more likely to be noticed and reported than other types, such as fraud.

[13] A CCJS study found that repeat offenders were three times more likely to be sentenced to custody than first-time offenders. CCJS. (October, 2002). "Pilot Analysis of Recidivism Among Convicted Youth and Young Adults, 1999/00". *Juristat* 22 (9), page 9.

It is doubly important to deal with these pressing issues because the Aboriginal population of the province is growing rapidly. Aboriginal peoples account for 11% of the provincial population overall, but 21% of the people aged 12 and under, 15% of people aged 12 to 17, and 8% of people over 18.[14] Thus, there is a growing number of Aboriginal peoples in the age group that is likely to have children of their own in the future. There will also be a large and growing number of Aboriginal people entering the age group of 15-24, the age group that is most at risk of committing crimes and being victimized. As a result, the crime rate may be higher in the future unless reforms occur now.

On a more positive note, as the Aboriginal population is young and growing faster than the non-Aboriginal population, Aboriginal peoples will account for a growing percentage of the workforce in the near future.[15] As shown in Table 4, there are some signs that the social well-being of Saskatchewan Aboriginal peoples is improving in terms of employment and education. Continuing improvements might counteract the possibility that crime rates will increase.

TABLE 4: IMPROVEMENTS IN THE SOCIAL WELLBEING OF SASKATCHEWAN ABORIGINAL PEOPLES

There have been some improvements in the social wellbeing of Saskatchewan Aboriginal peoples between 1986 and 1996.

Firstly, there has been a marked increase in education levels. The proportion of the Aboriginal population 15 years of age and older with less than grade 9 fell from 37.3% in 1986 to 23.1% in 1996. At the same time, the proportion with some university studies almost doubled from 7.3% to 14%, while the proportion with a university degree increased from 1.9% to 3.9%.

There have also been slight improvements in the employment and unemployment rates of Aboriginal people aged 15 and over. The Aboriginal employment rate rose from 35.1% in 1986 to 37.7% in 1996, while the unemployment rate declined from 29.4% in 1986 to 26% in 1996.

Information compiled for the Métis and Off-Reserve First Nations Strategy points to several other noteworthy trends. For example:

- Aboriginal enrolments at post-secondary institutions are stable or rising. As of 2000, about 10% of students at the University of Regina and 12% of students at the University of Saskatchewan were Aboriginal. These rates were unchanged from 1997. However, 18% of students enrolled at SIAST were Aboriginal, compared to 11% in 1997. Further, 21% of students enrolled in work-based training programs in 2000 were Aboriginal, up from 17% in 1997.
- The Registered Indian infant mortality rate is falling. The Registered Indian infant mortality rate decreased from 17.4 infant deaths per 1,000 live births in 1996 to 6.9 in 2000, although the infant mortality rate has fluctuated dramatically over those years from 17.4 in 1996 to 19.3 in 1997, 8.5 in 1998, 7.8 in 1999 and 6.9 in 2000. The overall infant mortality rate for the province has also decreased; the 1999 Saskatchewan infant mortality rate, at 5.6 deaths per 1,000 live births, was almost half the rate two decades earlier (10.3).

For additional information see Saskatchewan Women's Secretariat, *Profile of Aboriginal Women in Saskatchewan* (November 1999); Canadian Centre for Justice Statistics, *Profile of Aboriginal Peoples in Canada* (June 2001); and Michael Tjepkema, "The Health of the

Off-reserve Aboriginal Population," *Supplement to Health Reports*, Volume 13 (2002).

---

[14] Statistics Canada. (1996). *Census of Population*. Ottawa: Statistics Canada.

[15] The number of Registered Indian people in the 15-24 year old age group could increase by 37% between 1998 and 2008. (Department of Indian Affairs and Northern Development. December, 2002. *Population Projections of Registered Indians, 1998-2008*. Ottawa: Department of Indian Affairs and Northern Development). As a result, Aboriginal people will account for a growing proportion of the province's population. It is estimated that 14% of the provincial population may be of Aboriginal descent by 2016, which is an increase from 9% in 1991 and approximately 11% now.

STRATEGIC APPROACHES

This section of the submission discusses the four strategic approaches Saskatchewan Justice and Saskatchewan Corrections and Public Safety use to address the problems of offending and victimization in Aboriginal communities. These strategies are:

- building community ownership and capacity to address the factors associated with offending and victimization;
- developing partnerships;
- adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal people and meets their needs for safety and security; and
- improving the effectiveness of services to victims, offenders and communities.

BUILDING COMMUNITY OWNERSHIP AND CAPACITY

A community-owned approach and building community capacity to address the factors associated with crime go hand-in-hand and are the heart of an effective crime prevention/crime reduction strategy. The role of government in this process is to help communities build knowledge, skills and resources to meet their goals in ways that protect community safety and respect individual rights.

Community ownership

Without community ownership and involvement, justice system responses are limited to traditional approaches such as law enforcement and providing specific programs such as Legal Aid and victims services. On the other hand, a community-owned approach involves justice system partners and community members working together to identify an issue, determine what.resources are available to address the issue and what other resources might be needed, craft solutions, develop programs and deliver services. In a community-owned approach, communities take an active role in shaping justice policies.

Community ownership depends on two factors - willingness and capacity. Since these elements are different in each community, it is recognized that communities will have different levels of ownership. For example, when the FSIN engaged in community consultations on their strategic plan for corrections, they took an approach that allowed the communities to identify their level of willingness and capacity to address correctional issues. This enabled each community to define their priorities and recognized that one solution will not work for all.

It is also recognized that a community-owned approach is a gradual process as communities gain the experience to take on more challenging issues and projects. Some communities are struggling with serious issues such as alcohol and drug abuse, and it is likely that these communities will need ongoing services from the justice system and other government departments for some time. Other communities may want to "start small" and gain experience with a pilot project before delivering services on a broader scale. Still others have already developed experience in managing community-based projects and may want to expand the services they deliver and begin working to address other issues. It will be up to each community to determine what issues to address and what solutions will work best.

Community capacity building

Building community capacity is a long-term, dynamic process that deals with the social and economic factors related to crime in order to gradually reduce the level of offending and victimization. We define community capacity building as the processes that build sustainable knowledge, skills, resources and commitments to develop and manage programs and services that effectively address criminal behavior, victimization and risk factors associated with criminal behavior. Table 5 provides more detail about this definition of community capacity building.

Rather than focusing on what a community does not have, successful community capacity building should build on the existing strengths of community members and organizations. All communities have members with valuable skills, knowledge, experience, and a commitment to change. Part of the challenge in building community capacity is identifying and supporting these individuals.

Table 5: The Components of Community Capacity Building

Knowledge: The understanding of a certain subject.

Skills: Community capacity building requires general skills such as problem solving, planning, resolving conflict, and showing leadership. Specific skills include writing reports and using computers, as well as technical work skills, such as the ability to conduct mediations.

Resources: Resources include money, property, abilities and skills.

Commitments: For government departments, a commitment to capacity building includes giving up some control and responsibility for community issues. It also means supporting the goals and solutions developed by the community and supplying the resources to deal with an issue. For community, it means accepting that the community shares some of the responsibility for dealing with the problem.

The importance of community capacity building

Building community capacity to address the root causes of crime is important. It provides a way for community members, organizations, and leaders such as Elders to take an active role in addressing underlying social conditions linked to criminal activity. It can also help individuals better understand what is acceptable behaviour in their community and to feel that they have a valued role within it. According to Braithwaite (1989), low-crime societies are those where people feel mutual obligations and trust, have strong networks of personal connections with families, friends and others, and feel they are responsible for telling people when their behaviour is not appropriate while accepting them back into the community. It is important that victims feel supported by their communities so they will not fall into a cycle of despair and self-destructive behaviours, and it is important for offenders to become reintegrated with their communities and receive support to help prevent future offending.

Building community capacity to address local issues and to develop and deliver services can also be an important step for First Nations and Metis groups toward self-government and self-determination. Building community capacity involves Aboriginal communities, organizations and governments in determining their own priorities, developing their own solutions, and implementing and evaluating their own programs and services in ways that reflect the cultures and traditions of the communities.

The Solicitor General of Canada recently released a report about the Aboriginal Healing Movement in Canada that supports the concepts of community ownership and building community capacity. The report suggests that the issues of drug abuse and alcoholism in many Aboriginal communities reveals the need to heal from the effects of residential schools, racism and other long-term issues. The report supports the need for communities to accept responsibility for dealing with their issues and to involve community members and agencies rather than relying on external experts. It also indicates that healing requires changing the social, economic and environmental conditions in which people live and "moving beyond hurt, pain, disease and dysfunction to establish new patterns of living that produce sustainable well-being".[16] Long-term improvements in social, economic and political life for individuals, families and communities can only occur if there are opportunities for "better housing, greater levels of economic security and prosperity... [and] a significant increase in the capability (i.e. power and capacity) of the person to participate in planning and creating the future".[17]

The departments support many initiatives that build community capacity. For example, Saskatchewan Justice supports training initiatives that provide the skills needed by staff in community-based justice agencies. The Department also supports a number of community-based initiatives that involve staff, volunteers, other human service providers and community leaders in identifying and addressing local issues. For example, the La Loche Community Development Corporation (LLCDC) provides an integrated range of community development and community-based services that are offered to the village of La Loche, the Clearwater Dene Nation, Descharme Lake and Garson Lake. The LLCDC coordinates and administers a number of justice services in the area, including community justice, victim services, fine option, youth intervention, crime prevention and family violence prevention programs as well as a Saskatchewan Aboriginal Courtworker Program and Court Translator/Interpreter Services. The development of the LLCDC at the community level allows these programs to work in a team atmosphere that can approach client needs comprehensively.

Another example of an initiative that fosters community ownership and develops community capacity is the Regina Alternative Measures Program (RAMP). RAMP grew from a community process involving several Aboriginal organizations. This process resulted in the creation of an agency that promotes crime prevention and addresses issues such as prostitution in addition to resolving alternative measures cases.

DEVELOPING PARTNERSHIPS

Saskatchewan Justice and Saskatchewan Corrections and Public Safety believe that successful programs and services involve integrated approaches and partnerships whenever possible. Experience over the past ten years suggests that successful initiatives involve all of the affected parties and take time and effort to build. Our experience also suggests there will be difficulties, and perhaps even some failures, as new ideas are tried. The elements of successful partnerships are more fully described in Table 6.

Over the past several years, the departments have built successful partnerships and positive working relationships with Aboriginal governments and organizations, agencies in the criminal justice system, other departments and community-based organizations throughout the province. Saskatchewan Justice has, since 1994, provided funding to the FSIN and MNS for initiatives that involve policy, planning and community justice work, such as the Community-based Training Initiative developed in partnership with FSIN, the RCMP and the Department. This funding has usually been matched by Justice Canada, while the Solicitor General of Canada and Correctional Service of Canada has often matched funding for community corrections planning.

The Department has also supported justice initiatives developed by the Saskatchewan Association of Northern Communities, Inc. (SANC) and many First Nations and Tribal Councils across the province. While there is much more to be done to include Aboriginal peoples in the development of justice system policies, Aboriginal governments are increasingly involved in service and program delivery. The involvement of Aboriginal governments and organizations in delivering programs and services is discussed in more detail in the next section.

[16] Aboriginal Corrections Policy Unit. (2002). Mapping the Healing Journey. Ottawa: Solicitor General of Canada. Page 12.
[17] Ibid. p. 57

TABLE 6: CHARACTERISTICS OF SUCCESSFUL PARTNERSHIPS

An example of a successful partnership is the training initiative for community police boards in northern Saskatchewan that involves SANC, the RCMP and Saskatchewan Justice. In our experience, partnerships are successful if they have the following characteristics.

1. **All of the relevant stakeholders are meaningfully involved.** The northern communities provide space to hold training sessions and community members volunteer on the police boards. SANC organizes the training sessions, the RCMP provides transportation, and Saskatchewan Justice wrote the training manual.

2. **The stakeholders work to develop a common understanding about the purpose and goals of the initiative.** In this case, the partners agreed that they wanted to involve community members in policing, improve relationships between the RCMP and the communities, and help establish and support the police boards.

3. **The initiative has clear, measurable objectives.** For example, the partners agreed to develop the Framework Agreement for Community Policing Initiatives, write a training manual, and hold a number of training sessions every year.

4. **Ways of evaluating the initiative are considered right from the beginning, and feedback or evaluation results are used to improve the initiative.** Participants in the first year were asked to fill out a questionnaire about the training sessions and the manual. This feedback helped to revise the training manual and sessions.

Partnerships with the police, the judiciary, Crown prosecutors and other agencies in the criminal justice system are important in addressing offending and victimization. The Regina Auto Theft Strategy is an example of a successful partnership between the Regina Police Service and the Departments of Justice, Corrections and Public Safety, and Social Services. The strategy focuses on identifying youth who have a pattern of car theft offences. When released from custody, strict conditions are placed on the youth to enable youth workers and police to monitor them and provide programs that address their risks and needs. An evaluation of the Regina Auto Theft Strategy has recently reported that the strategy has been effective in using innovative approaches and techniques to deal with the problem of young offender car theft. Since the Strategy was implemented in February 2002, there has been a 43% reduction in the number of completed or attempted car thefts. In other words, there are more than 1,450 fewer stolen vehicles in Regina as a result of the Strategy.

Other partnership examples include Corrections and Public Safety working with the Cree Lodge Reintegration Program (delivered through the File Hills Qu'Appelle Tribal Council) and the Child, Youth and Family At Risk program at the Regina Friendship Centre. These community agencies participate in community supervision plans and provide services to youth that address their risks and needs.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are also involved in initiatives that promote partnerships and integrated approaches to human service delivery. For example, both departments participate in the Human Services Integration Forum, which involves several provincial departments in discussions about how to develop integrated approaches between provincial departments and communities. Regional Intersectoral Committees, funded through the Forum, involve a range of government and community-based organizations in developing processes through the provincial Child Action Plan and SchoolPLUS. The departments also participate in the Métis and Off-Reserve Strategy Committee. The Métis and Off-Reserve Strategy is comprehensive, cooperative and based on partnerships. Thirteen departments integrate work toward a common vision, goals and objectives that address education, skills training and work preparation, representative participation in the economy, and individual and community well-being. The Strategy recognizes that integrated work is necessary to achieve progress in these areas.

In terms of partnerships with other government departments and stakeholders, there is a need to continue developing integrated strategies that will involve all of the organizations in responding to crime. Focusing solely on changes within the justice system is unlikely to have a significant impact on the number of Aboriginal peoples who are victims or offenders because crime is related to social and economic factors. Moreover, the criminal justice system will continue to be the default way of dealing with serious social issues unless departments work together and target their resources rather than developing programs independently. As Saskatchewan Justice and Saskatchewan Corrections and Public Safety are mandated to deal with justice matters, there is a role for the Departments to play in coordinating these strategies.

ADAPTING THE CRIMINAL JUSTICE SYSTEM

For the justice system to work effectively, people must trust it and feel it protects them. Subsequently, it is vital that all people are treated fairly within the system and that they see it as responding to their needs for safety and security. For a variety of reasons - both historical and current - many Aboriginal people do not trust the justice system.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety believe this mistrust can be addressed in a variety of ways. For instance, by:

- establishing positive relationships between justice officials and Aboriginal peoples;
- reducing institutional barriers that affect Aboriginal peoples;
- dealing appropriately with complaints;
- increasing the number of Aboriginal employees in the justice system;
- increasing the number of services delivered by Aboriginal organizations; and
- ensuring that the justice system respects the values and traditions of Aboriginal peoples.

Establishing positive relationships

Saskatchewan Justice and Saskatchewan Corrections and Public Safety have a role to play in fostering positive relationships between justice system agencies, justice officials and Aboriginal communities. The attitude of justice officials plays an important role in the relationship between the system and Aboriginal peoples. Obviously, community members have less trust in the system when a justice official acts in a culturally insensitive or racist way. On the other hand, trust can grow if an official gets to know the people in the community and comes to understand the community's culture. To promote the building of positive relationships, the departments continue to provide cultural awareness and sensitivity training to staff.

Reducing institutionalized barriers

Institutionalized barriers are policies, practices, procedures or attitudes that make it more difficult for certain people or groups of people to access services or to participate in decisions or processes that affect them. These barriers may occur because of language, lack of capacity within a system, geography, culture, or many other factors.

For example, if the police arrest an Aboriginal person who does not speak English as a first language, that person will be at a disadvantage in dealing with the arresting officer and his or her Legal Aid lawyers, and could have difficulty participating effectively during the court process. The person may not be able to express their version of events or understand what witnesses and lawyers are saying. If found guilty, the person may not understand the judge's verdict, the implications of the verdict or the conditions of the sentence, which might lead to more charges if they breach the conditions.

The capacity of the justice system to handle matters promptly can also be an institutional barrier. For example, Crown prosecutors, Legal Aid lawyers, the judiciary and court staff fly into remote areas of the province to hear cases. Since the court is only in the community for a short period of time, accused persons may not have much time to speak to Legal Aid lawyers and Crown prosecutors may not have much time to interview witnesses or speak to victims. These problems are especially serious in some northern communities where the population is mostly Aboriginal.

The capacity of human service providers outside the justice system can also be an institutional barrier, since individuals are often ordered to attend programs providing services for addictions, family violence or other issues. Often there are lengthy waiting lists for these services, and individuals may commit other crimes while waiting to access the services they need. This in turn leads to more charges and more serious interventions by the criminal justice system.

Geography is another possible barrier to Aboriginal people within the justice system. For example, due to the limited space in northern correctional facilities, northerners on remand are often moved to the Prince Albert Correctional Centre while they wait for the trial to occur. When this happens, the accused person may be cut off from their family and community for a lengthy period of time.

Lack of understanding about cultural practices and beliefs can also act as an institutional barrier. For example, some non-Aboriginal people are not aware of the important role Elders have in the Aboriginal community. As a result, Elders working in justice programs may not always be treated with the same respect or professionalism as clergymen or human service workers.

Institutionalized barriers such as these increase alienation between Aboriginal peoples and the justice system. Further barriers are created when communities and community organizations are not involved in developing policies and making decisions about what services to deliver. Communities may feel that government is simply imposing more policies and services on them.

Saskatchewan Justice is currently going through a process to examine internal polices, procedures and attitudes to determine what institutionalized barriers may be affecting how Aboriginal peoples are treated in the justice system.

Dealing Appropriately with Complaints

Dealing appropriately with complaints is important to ensure that the justice system treats citizens fairly, respects their values, and meets their needs for safety and security. Those working in the justice system must be held to a high standard of conduct in dealing fairly, professionally and courteously with all citizens, regardless of their ethnicity or cultural background. There have been incidents of racism by officials in the justice system and there have also been times when justice officials have encountered harassment from clients or members of the public. However, in working to create broader understanding, it must be stated that racist or abusive behaviour is never acceptable and is particularly inappropriate from officials in the justice system.

If an individual feels they have been treated inappropriately or unprofessionally, or if they have a complaint about a service, program or decision involving the departments or departmental staff, they are encouraged to bring their concerns to the departments' attention. The departments will investigate the complaint and take appropriate action. If the complaint involves police or the judiciary, there are special procedures for resolving the complaint. There is also a special procedure for holding coroners' inquests to investigate the deaths of people in police or corrections custody.

Complaints involving Crown prosecutors

Individuals who have complaints involving Crown prosecutors are encouraged to try to resolve them at the local level by speaking directly to the prosecutor involved. Sometimes complaints arise from misunderstandings of the legal process, so they can be resolved by simply talking to the prosecutor. However, if this does not resolve the matter or if the person making the complaint has trouble contacting the prosecutor, they are encouraged to speak with the Regional Crown Prosecutor. This official, who is in the same office and has access to the files of the prosecutor in question, is in the best position to investigate the complaint quickly. If the matter is still unresolved after a discussion with the Regional Crown Prosecutor, the individual is encouraged to contact the head office of Public Prosecutions Division in Regina. All of the lawyers in that office are senior prosecutors who can investigate complaints and direct how the matter can be resolved.

Complaints involving Legal Aid

A person who has a complaint about legal aid services can make a complaint by contacting the Chief Executive Officer (CEO) of the Saskatchewan Legal Aid Commission. Often, complaints occur because a person is told that they are not eligible to receive legal aid, or that they will have to pay a portion of the cost of the legal aid services. *The Legal Aid Act* states that the person making the complaint can appeal the decision to the CEO within 20 days after the date of the decision. The CEO's decision is final unless the matter involves the applicant's or client's financial eligibility to receive legal aid services for civil law matters, or to pay a portion of the costs for civil legal services that are provided. In this case, the person may appeal the decision to the Civil Appeal Committee. The Civil Appeal Committee may decide to agree with the decision of the CEO, change the CEO's decision or substitute its own decision. The Civil Appeal Committee has the authority to make the final decision about the matter.

If a person makes a complaint on behalf of someone else regarding an applicant's eligibility for legal aid, the Legal Aid Commission will investigate the matter, but can not give the complainant the results of the investigation because the client's information is confidential. However, if a person is making a complaint about his or her own file, they will be advised of the CEO's decision by telephone or in writing.

Complaints involving correctional facilities

Complaints about treatment in the adult and youth correctional systems may be dealt with in a number of ways. Typically, complaints are first raised with staff, supervisors and managers. The procedure for appealing these decisions is outlined in corrections policy.

Complaints regarding adult corrections may also be made to the provincial Ombudsman, while complaints regarding youth corrections may be made to the Children's Advocate. The Ombudsman and Children's Advocate are Officers of the Legislative Assembly of Saskatchewan and have the authority to investigate complaints received from members of the public who believe the government has dealt with them unfairly. The Children's Advocate has the authority to promote the interests of and act as a voice for children when there are concerns about provincial government services. Both the Ombudsman and the Advocate make recommendations to the Saskatchewan Corrections and Public Safety about specific cases as well as system-wide issues.

The Ombudsman recently released a two-year study on issues in Adult Corrections, titled *Locked Out: Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres*. The report makes about 190 recommendations and suggestions for improvement. Saskatchewan Corrections and Public Safety worked with the Ombudsman's Office during the course of the review and a number of recommendations have already been implemented. The Department is currently developing a detailed action plan to respond to the report.

The Children's Advocate has made recommendations from time to time about the Young Offenders Program. The Department is working with the Children's Advocate to address these recommendations. The Advocate also reviews the death of any child who has had young offender involvement in the twelve month period before the death occurred.

Complaints involving the police

Like all other justice officials, police are expected to respect the law and to meet a high standard of fair, courteous and professional conduct. If someone feels they have not been treated in this way, there are a number of mechanisms in place to ensure that allegations against police officers are investigated thoroughly and dealt with fairly.

Police complaints in Saskatchewan are dealt with in two separate ways, depending on whether the complaint involves a police officer in the RCMP or in a municipal police service.

Complaints against members of the RCMP are reviewed by the Commission for Public Complaints Against the RCMP. The Commission is an independent body that is not part of the RCMP. The Commission does not act as an advocate for either the complainant or the RCMP. It is not a disciplinary body, so it cannot discipline RCMP members or award compensation to complainants. The Commission makes findings and recommendations to the RCMP Commissioner, who must indicate what actions the RCMP have taken or will take to address the matter. If the RCMP Commissioner decides to take no action on a finding or recommendation, he must explain this decision to the Chairman of the Public Complaints Commission and to the Solicitor General of Canada.

All complaints against a municipal police officer are reviewed by the Office of the Saskatchewan Police Complaints Investigator under *The Police Act, 1990*. The Complaints Investigator or the applicable police service office investigates the matter. If the complaint involves actions contrary to the conduct expected of a police officer under the regulations of *The Police Act, 1990*, the officer may be charged with a breach of discipline. In such cases, the Saskatchewan Police Commission appoints an independent lawyer called a "Hearing Officer" to hear the matter and make a finding of guilty or not guilty.

If the police officer or the Chief of a municipal police service wishes to appeal the decision of a Hearing Officer, the matter is referred to the Saskatchewan Police Commission for review. The Commission is an independent tribunal that acts as the final appeal or review body.

If the complaint alleges that the police officer may have committed a criminal offence, the matter is investigated by the applicable police service or the RCMP. These complaints are always referred to a senior Crown prosecutor who determines whether a criminal charge is appropriate.

Following concerns about possible police misconduct about the deaths of Aboriginal men in Saskatoon in February 2000, the FSIN established a Special Investigations Unit to look into these and other complaints. The Unit has been a useful means of bringing forward concerns from the community. Saskatchewan Justice has provided funding for the Unit since 2001.

Complaints involving the Judiciary

There are two councils that are responsible for dealing with complaints and allegations of judicial misconduct. Complaints regarding Provincial Court judges are dealt with by the Saskatchewan Judicial Council, while complaints regarding superior court judges (judges in the Court of Queen's Bench and the Saskatchewan Court of Appeal) are dealt with by the Canadian Judicial Council.

The councils make an independent assessment about the judge's conduct; they do not consider whether the judge's finding or ruling is wrong. The distinction between judicial decisions and judicial conduct is fundamental because judges' decisions can be appealed to a higher court.

If a council finds that the judge's conduct was improper or inappropriate, a variety of measures can be taken. These actions range from a warning or reprimand to suspension or removal from their position.

Coroners Inquests

While coroners inquests are not a complaints process, they ensure there is public scrutiny of deaths in custody. Inquests examine the circumstances surrounding the death of an individual, such as where and when a person died as well as the medical cause and manner of death. *The Coroners Act* requires an inquest to be held into the death of any person who dies while an inmate in a jail, penitentiary, lock-up or correctional facility. Inquests are called by the Chief Coroner of Saskatchewan and are conducted by coroners, some of whom are senior lawyers. Inquests also involve community members on a jury panel that may make recommendations about ways of preventing similar deaths in the future.

The Coroners Act also provides that the Minister of Justice and Attorney General may direct the Chief Coroner of Saskatchewan, or any other coroner, to hold an inquest into the death of a person.

Increasing the number of Aboriginal employees in the justice system

As of September 2002, 11.4% of employees in the Departments of Justice and Corrections and Public Safety were self-declared as being of Aboriginal ancestry. Although this proportion is similar to the proportion of Aboriginal people in the provincial population, the departments will work to recruit more Aboriginal employees -particularly at the supervisory, managerial, professional and executive levels.

The number of Aboriginal judges, Crown prosecutors and Legal Aid lawyers is low, and more is being done to recruit Aboriginal peoples in these occupations. On a more positive note, police services are making good progress. The RCMP Training Depot has graduated three Aboriginal troops over the past three years and all of those graduates were posted to Saskatchewan. Table 7 provides the number of self-identifying Aboriginal police members in each police service as a percentage of the total number of members.

TABLE 7: PERCENTAGE OF ABORIGINAL POLICE OFFICERS IN SELECTED SASKATCHEWAN POLICE SERVICES AS OF NOVEMBER 2002

	Number of Aboriginal Police Officers	Total Number of Officers in the Police Service	Percentage of Aboriginal Police Officers
Regina Police Service	30	337	8.9
Saskatoon Police Service	30[18]	378	7.9
Prince Albert Police Service	17	71	23.9
RCMP	155	998	15.5

Source: Police Services

Increasing the number of services delivered by Aboriginal organizations

Saskatchewan Justice and Saskatchewan Corrections and Public Safety aim to have justice services delivered by Aboriginal organizations and governments whenever possible. This is consistent with an approach based on community ownership and building the capacity of communities to develop and implement their own solutions. Justice services delivered by Aboriginal organizations and governments can provide assistance to victims and offenders in ways that are culturally appropriate. Tribal councils, friendship centres and other Aboriginal organizations are involved in delivering youth and adult alternative measures and community justice services. Staff may be more likely to know the victim and offender as individuals, and services in the community that can help to address their needs.

[18] The number of Aboriginal police officers in the Saskatoon Police Service includes two Special Constables.

Saskatchewan Justice currently holds approximately 80 contracts with 60 First Nations, Tribal Councils and Aboriginal organizations for delivering community-based justice services. These services include Aboriginal family violence programs, crime prevention programs, community justice programs, alternative measures programs, First Nations policing programs and policy development initiatives. Saskatchewan Corrections and Public Safety has approximately 92 contracts with Aboriginal governments, organizations and individuals. Most of the employees in the adult and youth programs operated by Aboriginal organizations are of Aboriginal descent. For example, 129 of the 172 positions involved in community justice and alternative measures programs, the Saskatchewan Aboriginal Courtworker Program, and field staff in victims services programs[19] are staffed by Aboriginal people.

Saskatchewan Corrections and Public Safety is interested in developing more early release agreements with First Nations communities. In these agreements, representatives from the community play a role in developing an integrated case management plan for the offender and supervising the offender during early release. Early release agreements are currently in place in Mistawasis, Sturgeon Lake, English River, Waterhen Lake, Lac la Ronge, Montreal Lake, Flying Lake and Black Lake First Nations.

There are many other services that could be delivered by Aboriginal governments and organizations. For example, the FSIN and some Tribal Councils are interested in developing First Nations Police Services. The File Hills Police Service is currently in a three-year process of gradually moving from RCMP policing to a self-administered policing service. Saskatchewan Justice is supporting File Hills in this initiative and is willing to work with other First Nations governments in developing self-administered police services. However, both departments are interested in hearing new ideas, learning what is working in other places, and working with Aboriginal organizations to implement initiatives that will address the needs of Saskatchewan communities.

Ensuring that the justice system respects the cultural practices and traditions of Aboriginal peoples

The cultures of Aboriginal peoples form a vital part of our national and provincial heritage. While justice system officials must understand the cultural practices of many peoples, it is particularly important that they understand and respect the traditions of Aboriginal peoples, who account for a large and growing proportion of the provincial population.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are working on a number of initiatives to help integrate the practices of Aboriginal people into the justice system. In addition to developing the Traditional Elders Advisory Committee, Saskatchewan Justice administers the Saskatchewan Aboriginal Courtworker Program and the Northern Cree Circuit Court. Saskatchewan Corrections and Public Safety supports the Prince Albert Grand Council Healing Lodge and the Paul Dojack Youth Centre Oshihtawin Program, as well as programs that provide Aboriginal inmates with the opportunity to work with Elders and attend cultural and spiritual ceremonies.

Developing the Traditional Elders Advisory Committee

To help build a better understanding of the values and needs of Aboriginal communities, Saskatchewan Justice and Saskatchewan Corrections and Public Safety are developing a Traditional Elders Advisory Committee. The committee, which will include Elders from the various linguistic groups in the province, will work with the departments to improve the relationship between the departments and the traditional Aboriginal community. The Committee will also provide advice to ensure that policies and community-based services are appropriate in terms of the culture, language and history of the community.

---

[19] This includes coordinators and assistant coordinators in police-affiliated victims services programs, Aboriginal Resource Officers, victim/witness coordinators and Aboriginal family violence programs.

The Saskatchewan Aboriginal Courtworker Program

The Saskatchewan Aboriginal Courtworker Program attempts to ensure that people accused of a crime understand the way the criminal justice system works. The initiative, which is cost-shared by the federal and provincial government, is delivered by Aboriginal organizations. Although the program focuses on Aboriginal people, all people can request the services of a Courtworker. The purpose of the Saskatchewan Aboriginal Courtworker Program is to ensure that Aboriginal youth and adults appearing before the criminal courts receive fair, just, and culturally sensitive treatment. Courtworkers provide a range of information, liaison, referral and counseling services to people in conflict with the law. Services are available in 76% of court points in Saskatchewan. These court points are areas where there are a high number of Aboriginal people charged with a criminal offence. Last year, over 12,000 people received courtworker services.

The program has a history of good co-operation with the FSIN and the MNS. Together with officials from Saskatchewan Justice, representatives from these organizations form the Program Advisory Board.

Provincial Court Initiatives

The judiciary, particularly in the Provincial Court, has supported a number of initiatives that attempt to make the courts more responsive to the needs of Aboriginal peoples. For example, court is now held on-reserve in a number of locations throughout the province and a protocol has been developed to help determine the appropriateness of establishing court on-reserve. The construction of a "circle court" in the new Saskatoon Provincial Court is another example. The circle court is used as a therapeutic court for victims and families of youth involved in crime. It provides a more informal and relaxed environment in which to examine the youth's family life, educational status, and other factors and consider how the community and human service agencies can support the youth.

The Northern Cree Circuit Court is a major initiative that attempts to make the justice system more responsive to the values of Aboriginal communities. The Northern Cree Circuit Court, which began operating in October 2001, hears cases in the communities of Sandy Bay, the Big River First Nation, and Pelican Narrows. The judge, Crown prosecutor, court clerk, and two probation officers speak Cree fluently, while the Legal Aid lawyer has the help of an interpreter. The Northern Cree Circuit Court has also increased the use of restorative justice approaches and referred more cases to human services agencies. A formal evaluation of the Northern Cree Circuit Court is underway. However, communities served by the Court and stakeholders in the criminal justice system have expressed a great deal of enthusiasm for the court. Saskatchewan Justice is interested in supporting similar initiatives in other parts of the province.

The Prince Albert Grand Council Healing Lodge

Saskatchewan Corrections and Public Safety provides funding and operational support to the Prince Albert Grand Council Spiritual Healing Lodge. The Lodge helps Aboriginal offenders address their needs in the context of their spiritual and cultural beliefs. Developing understanding of and pride in the First Nations heritage helps residents to develop a healthy lifestyle and a sense of belonging. To this end, staff and Elders at the Lodge provide inmates with a solid grounding in First Nations culture and customs to help address their physical, mental, emotional and spiritual needs. This involves teachings about the history, customs, traditions, ceremonies and symbols of First Nations cultures. The program uses a wholistic healing process to address issues such as the roots of violence, family dynamics, and sexual abuse. In March 2002, an evaluation of the Healing Lodge indicated that the program is having a positive effect in helping offenders accept responsibility and be accountable for their behavior.

Corrections programs involving Elders and Aboriginal culture or spirituality

Although it should not be assumed that every Aboriginal offender will want to participate in cultural programs or spiritual ceremonies, it is important that Aboriginal inmates have opportunities to participate if they wish. Pipe ceremonies, smudging ceremonies, sweat lodges, pow-wows, feasts and round dances are held regularly at correctional centres and Aboriginal inmates organize self-help and fellowship groups that offer educational, spiritual and cultural activities. Some of the correctional centres provide programs that are developed by or with the input of local Elders, and all of the major correctional centres have contracted Elders to provide cultural, spiritual and personal counseling. Offenders who are on probation or serving conditional sentences can access Elders and other services through Aboriginal community-based organizations.

The Paul Dojack Youth Centre Oshihtawin Program is an example of how the involvement of Elders can make a significant difference in dealing with young offenders. The Centre's Elders Council includes five or six Elders or ceremonial people who are recognized by the head Elder of Treaty 4. The Elders Council oversees all of the cultural programs at the youth centre including ceremonies, cultural values, and education about the history of Aboriginal peoples. The Elders Council was also consulted in developing the purpose, program content and procedures for the Oshihtawin Unit. This residential unit is for youth who have acted in a seriously violent way in their home unit. The Elders agreed to the need and direction of the unit and determined its name. The Elders provide sweat ceremonies, education and cultural values programming to the youth, while staff provide supervision, educational programming, and specialized programs such as developing communication and anger management skills. As a result of this program, many of the youth eventually return to their home unit.

Saskatchewan Corrections and Public Safety will continue working with Aboriginal communities and Elders to deliver programs that are appropriate for offenders and to increase the sensitivity of staff to spiritual and cultural issues.

IMPROVING THE EFFECTIVENESS OF SERVICES

While it is vital to work over the long term to build community ownership and capacity to address the social and economic factors that influence offending and victimization, it is also necessary to respond appropriately when crime occurs. Clearly, people must be held accountable for their actions. Saskatchewan Justice and Saskatchewan Corrections and Public Safety continually seek ways to improve the effectiveness of services to victims, offenders and communities. This involves:

- restorative justice and alternative measures;
- community policing;
- effective corrections programs for offenders;
- responding to issues of serious crime, such as family violence and child sexual exploitation;
- making the justice system more responsive to the needs of victims; and
- improving justice services in northern Saskatchewan.

As part of this work, the departments are developing approaches that are based on sound research and best practices in other parts of Canada and the world. This includes evaluating programs, monitoring their effectiveness, and making changes to improve them. It also means having clear, measurable goals and objectives and building evaluation into the design of new programs and initiatives, rather than thinking about evaluation and outcomes afterward.

Restorative justice and alternative measures

Restorative justice is a philosophy that has been developing nationally and internationally over the past few decades. It draws on traditional methods of resolving conflict that are used by many cultures, including those of Aboriginal peoples. A restorative approach:

- defines crime as a violation of one person by another, rather than focusing solely on crime as a legal offence against the State;
- focuses on problem-solving;
- involves victims and offenders in resolving the matter; and
- works to reintegrate the offender into the community and help them to make positive changes in their life.

Restorative justice is consistent with the strategic approach described in this submission. Restorative justice reflects community ownership, as it involves victims, the accused, families and community members. It also reflects the community capacity building approach because the problem solving that takes place during the process considers how to prevent the crime from happening again and how to deal with the underlying issues that may be involved. In addition, the restorative justice approach is consistent with the values of Aboriginal communities.

There is a growing body of research in Canada about the effectiveness of restorative justice. For example, one group of researchers examined the results of 22 studies about restorative justice.[20] The studies focused on the satisfaction of victims and offenders with the process, the impact of restorative justice on re-offending, and the extent to which the offenders completed agreements about making restitution. The results were very positive. Victims were very satisfied, offenders were much more likely to make restitution and the rate of re-offending was reduced by 7%. There was no impact on the satisfaction of offenders, however.

Data from Saskatchewan indicate that alternative measures result in high levels of satisfaction for victims and communities. Community-based agencies that offer alternative measures report that partnerships are increasing and that communities are becoming more involved. Moreover, more than 8 in 10 youth and adult alternative measures cases result in agreements between the youth or adult, the victim, family members and others involved in the incident, about how to resolve the matter and make right the harm that was done. Of these agreements, about 9 in 10 are fulfilled, which means that the offender met conditions such as providing restitution to the victim, working in a volunteer or charitable organization, attending counseling or addictions programs, making presentations in schools and many others. These successful outcomes help to make right the harm that was done to the victim and the community, and educate the offender and others about the consequences and impact of crime.

In addition to satisfying victims and communities, data from alternative measures programs for youth in Saskatchewan indicate that the programs help reduce community caseloads. Between 1998 and 2001, the increase in the use of alternative measures coincided with a decrease in the average daily number of youth who received community sentences. There was a 4:1 ratio regarding the increase in the use of alternative measures for youth and the decrease in community caseloads.

---

[20] Latimer, Jeff, Craig Dowden and Danielle Muise. (2001). *The Effectiveness of Restorative Justice Practices: A Meta-Analysis.* Ottawa: Research and Statistics Division, Department of Justice Canada.

The role of Saskatchewan Justice and Saskatchewan Corrections and Public Safety in supporting restorative justice and alternative measures

The criminal justice system has an important role to play in restorative justice. However, restorative justice will not end the need for the criminal justice system because it is important to ensure that restorative processes are fair, protect victims and communities, and respect the legal rights of the accused. There is room for restorative approaches at many points throughout the criminal justice process. For example, communities can become involved in responding to crime and dealing with conflict before charges are laid, after an offender has been sentenced, or when the offender is going to return to the community after a custody sentence.

The departments participate in a number of activities that fit a restorative justice approach. These include:

- encouraging a restorative philosophy, for example, by using mediation to resolve internal conflicts or conflicts with other stakeholders;
- exploring the use of restorative processes in custody facilities and after offenders have been sentenced or released from custody;
- increasing the use of alternative measures and pre-charge referrals; and
- helping community justice and alternative measures programs expand their services.

One of the challenges for the departments is to determine how a restorative approach would apply to our internal operations and to custody facilities. The Dispute Resolution Office of Saskatchewan Justice has been actively involved in mediating disputes and in training government and non-government organizations and officials in various methods for resolving disputes, but further work is needed to integrate a restorative approach throughout the departments' internal practices.

Increasing the number of pre-charge referrals is another challenge. In pre-charge referrals, the police refer a case to a community justice program or alternative measures agency before charges are laid. The accused person is not charged if they complete the alternative measures process. In post-charge referrals, the accused person is charged but the charges are stayed if they complete the process. In general, the more serious the crime, the more likely the matter will be referred after charges are laid. However, the departments believe that more matters should be referred before charges are laid. This would keep the accused out of the formal court system, in the hope that they would learn from the experience and change their behavior. The departments are working with police, community agencies and other stakeholders to encourage the use of pre-charge referrals.

The departments also want to continue working with community-based programs to expand their capacity to deal with more cases. Most programs are already operating at maximum capacity. Helping these agencies develop new projects, accept more cases or deal with more serious matters requires more than additional funding - it requires adequate support services in the community, staff training in dealing with more serious matters, and good working relationships between all of the stakeholders. The departments are working with community-based organizations, federal and provincial government departments, and other stakeholders to determine how expansion could occur.

Community policing

Over the past decade, the police have moved from a model of policing based on enforcing the law to a community policing model. Community policing is a philosophy that focuses on both enforcement and prevention. It is based on the idea that the police and public share responsibility for community safety. Police officers are assigned to work in specific zones so that they get to know the people in the area. They are encouraged to resolve community problems by using collaborative problem solving, restorative justice approaches, and referring appropriate matters to alternative measures programs.

Research on community policing demonstrates that this approach can produce significant changes in reducing crime and improving relationships between police and the public. In a study of community policing in Chicago, neighborhood residents were interviewed about the most serious problems facing their communities, and police were encouraged to be more responsive to the problems identified. The evaluation found that community policing had an impact on reducing identified crime problems in nine out of 20 categories - about a 45% success rate. This evaluation also looked at the impact of community policing on drug and gang problems and the physical decay of buildings and infrastructure in the neighborhood, as well as how community members perceived police responsiveness to community concerns. In these categories, the evaluation found positive improvements in 10 out of 20 outcome measures, for a success rate of 50%. Moreover, other studies have shown that fear of crime went down in half of the communities involved in community policing.[21]

Community policing is well established in Saskatchewan. The RCMP train police and community members in this problem-solving method. The civilian police boards of the municipal police forces and the police management boards for First Nations Community Tripartite Agreements have prioritized community policing for their police services. In rural and northern Saskatchewan, citizens are increasingly involved in policing through community police boards, and the Regina Police Service has opened two community police stations.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are interested in working with the RCMP and the municipal police services to increase the use of community policing throughout the province. This will occur by:

- fostering the development of police boards in order to involve citizens in determining policing priorities for their communities;
- involving the police in crime prevention programs and community capacity building efforts; and
- working with schools, youth and others to promote healthier lifestyles for youth.

These objectives could be met in many ways, depending on which police service was involved and the resources available. In general, they depend on developing partnerships between the police and community organizations to address specific crime and community issues. For example, the police could work with the local police boards to develop workplans about addressing the types of crime that are problems in that community.

Community policing requires a change in attitudes from both the police and the public. The police must be willing to accept a broader role that focuses on preventing crime and dealing with community issues, while the public must accept that they share responsibility for maintaining peace and security. Increasing the use of community policing is a gradual process. It takes time to build partnerships between the police and the community. It will also take time to develop community policing in communities with high rates of crime and to ensure that at-risk groups are meaningfully involved in problem-solving and building partnerships.

Expanding community policing is challenging due to the high crime rate in the province and the high level of serious violent crime in some communities, which requires the police to focus on responding to calls instead of spending time on community policing approaches. Since 1999, Saskatchewan has increased the annual policing budget by a record $18 million, which has provided 132 more police officers. This has helped to increase the amount of time police officers can dedicate to community policing. Saskatchewan Justice continues to look for ways to increase the number of police officers and work with the RCMP and the municipal police services to expand the use of community policing.

---

[21] Skogan, Wesley B. (September, 1996). *Evaluating Problem Solving Policing: The Chicago Experience.* Paper presented at the Problem-Solving Policing as Crime Prevention Conference in Stockholm, Sweden.

Providing effective programs for offenders

Saskatchewan Corrections and Public Safety works to rehabilitate and reintegrate offenders while protecting community safety and reducing the risk of re-offending. There is growing awareness that imprisonment should be reserved for offenders who pose the greatest risk to society, while lower-risk offenders are best managed through community-based programs and supervision. However, reducing the reliance on incarceration can only occur if there are adequate, safe and appropriate ways of managing lower-risk offenders in the community. This requires providing effective programs to reduce the risk of re-offending by addressing the offender's needs.

Research illustrates the importance of using the right type of intervention. Inappropriate interventions, or sentencing offenders without providing appropriate interventions, does not reduce re-offending. Table 8 describes the elements of programs that are successful in reducing youth and adult re-offending.

Programs based on the elements of effective interventions demonstrate a positive impact on re-offending. For example, preliminary evaluations of the Offender Substance Abuse Prevention Program (OSAPP), done by the Adult Corrections Division, indicate that re-offending is reduced by up to 17%. However, the impact of the program on re-offending tends to be lost two to three years after offenders return to the community due to a lack of ongoing support and community programs. The Adult Corrections Division has also implemented family violence interventions, cognitive skills development, sex offender relapse prevention and substance abuse treatment programs in custody facilities and community probation offices across the province.

A provincial risk/needs assessment during 2001-2002 found that the risk factors of Aboriginal and non-Aboriginal peoples are almost the same. For both Aboriginal and non-Aboriginal offenders, the areas that required the most attention were employment skills, family and marital relationships, and drug and alcohol use. However, the percentage of Aboriginal offenders with these needs is higher. For example, 73% of Aboriginal offenders in correctional centres needed to develop employment skills compared to 54% of non-Aboriginal offenders.

TABLE 8: ELEMENTS THAT REDUCE YOUTH AND ADULT REOFFENDING[22]

- Commitment to the value of rehabilitating offenders, and careful attention to the research.
- Using a proven and tested instrument that measures the offender's risks and needs in order to match risk to the level of service provided. Risk assessment is crucial to identify the risk factors that need to be addressed in order for the offenders to be successfully rehabilitated. Individual risk assessment is needed because these factors are unique for each person.
- Systematically addressing risk factors such as antisocial attitudes, feelings, and association with others who are involved in criminal activity; promoting family affection while increasing parental supervision; increasing self-control; learning positive social skills; and reducing alcohol and drug use.
- Responsivity. This refers to choosing types of services that are capable of influencing the criminogenic needs of each offender. This includes using appropriate types of services, how these models or interventions are applied, and whether they are delivered in a manner that fits for the individual. For example, interventions that involve the active participation of the offender are more helpful for many offenders than programs in which they hear a lecture.

---

[22] These elements are summarized from three articles. See McGuire, J. & Priestly, P. (1995). "Reviewing 'What Works': Past, Present and Future". In *What Works: Reducing Reoffending, Guidelines From Research and Practice*. John Wiley & Sons Ltd., New York, New York. See also Dowden, C. & Andrews, D.A. (1999). "What Works in Young Offender Treatment: A Meta-Analysis". In *Forum on Corrections Research* 11 (2) pages 21-24. Finally, see Leschied, A. (2000). "Informing Young Offender Policy in Current Research: What the Future Holds". In *Forum on Corrections Research*, pages 36-39.

Both Aboriginal and non-Aboriginal offenders can enter programs to develop literacy and employment skills, address addictions, and deal with issues such as domestic violence and sexual offending. Programs that are specific to Aboriginal offenders, but available to non-Aboriginal offenders as well, are becoming more common. One example is the Balanced Lifestyles program which the Regina Correctional Centre developed in consultation with Elders. This program focuses on the offender's attitudes and behaviors by teaching skills for setting goals and making decisions. It involves the community in holding sweat lodges and in providing education about addictions and other topics.

One difference between Aboriginal and non-Aboriginal offenders is that Aboriginal offenders tend to be classified as higher-risk to re-offend.[23] Using current data from the provincial corrections database, Tables 9 and 10 outline the levels of risk to re-offend for offenders in custody and community programs. In both custody and community programs, a higher proportion of Aboriginal offenders were at the highest risk levels. Very few were at the lowest. The difference was the most pronounced for offenders in custody.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are jointly working with Aboriginal organizations to address the issue of re-offending. For instance, the departments participate in the Youth Services Model pilot projects in Prince Albert and Regina, which are currently being evaluated. It is expected that the evaluations will demonstrate the effectiveness of government and community agencies working together to reduce reliance on the youth justice system. This initiative also involves the Departments of Health and Learning.

TABLE 9: RISK PROFILES OF OFFENDERS IN CUSTODY IN NOVEMBER, 2002

	High Level of Risk %	Medium Level of Risk %	Low Level of Risk %
Non-Aboriginal	51	42	7
Status Indian	75	23	2
Non-Status Indian	62	38	0
Métis	66	33	1

TABLE 10: RISK PROFILES OF OFFENDERS IN THE COMMUNITY IN NOVEMBER, 2002

	High Level of Risk %	Medium Level of Risk %	Low Level of Risk %
Non-Aboriginal	28	52	20
Status Indian	59	35	6
Non-Status Indian	57	35	8
Métis	48	44	8

Another example is the Young Offenders Forum - a partnership that focuses on reducing Aboriginal youth re-offending. Developed jointly by the Young Offenders Division and the FSIN, the Forum examines how low-risk Aboriginal youth can be diverted from the formal justice system and how to decrease the re-offending of higher-risk youth. In early 2003, the Department and First Nations communities will jointly offer a training session about the risk assessment of young offenders. As information on the risks and needs of youth become more clearly identified, the Department will develop new programs and change existing programs to address the needs of young offenders in the most effective way.

---

[23] In 2002, with help from the Research Branch of the Solicitor General of Canada, Adult Corrections Division evaluated the effectiveness of the risk/needs assessment instruments used to predict re-offending. The evaluation found that the instruments used by Saskatchewan Corrections were valid tools for predicting the re-offending of Aboriginal and non-Aboriginal offenders.

Providing Programs for Female Offenders

Meeting the needs of female offenders is a challenge for Saskatchewan Corrections and Public Safety. Although the population of female inmates has not increased significantly over the last several years, there has been a major change in the profile. The profile of female offenders is now more likely to include violent offences, and drug abuse has become a serious issue. Alcohol abuse also continues to be a significant problem. As well, the average sentence length for female offenders is higher in Saskatchewan than in other jurisdictions. There is a need to develop a strategy that will identify the needs of female offenders and the appropriate level of level of correctional intervention. The new model would involve comprehensive programming and community resources to address risk factors, while balancing the need for rehabilitation against the need to protect community safety.

Alcohol and Drug Abuse

Saskatchewan Corrections and Public Safety is also responding to the serious issue of alcohol and drug abuse in many communities. Alcohol and drug abuse is linked to violent crimes because individuals may become violent while intoxicated, and to property crime, as people may commit such crimes to obtain money to support their habit. An assessment of the risks and needs of inmates in provincial correctional centres in 2001-2002 indicated that approximately 60% of offenders had considerable difficulty with drug and alcohol use, while 27% had some difficulty. Only 13% had no difficulty. Information from Saskatchewan Health indicates that 55% of clients in alcohol and drug programs funded by the Department in 2000-2001 were Aboriginal. Furthermore, 51% of the Aboriginal clients had some involvement with the legal system compared to 32% of non-Aboriginal clients.[24]

The Department is committed to developing a strategy for providing alcohol and substance abuse programs in both correctional centres and community settings. OSAPP has shown demonstrated results in dealing with addictions. Of the provincial offenders who completed OSAPP in 1998, 52% were re-convicted of new criminal offences. In contrast, 69% of offenders who did not attend or complete the program were re-convicted in the same time frame. This indicates that the OSAPP program resulted in a 17% decrease in re-offending.

Fetal Alcohol Syndrome /Fetal Alcohol Effect

Dealing with the effects of Fetal Alcohol Syndrome or Fetal Alcohol Effects (FAS/FAE) is another challenge for the Department. Estimates about the rate of FAS/FAE in the province vary greatly, but it is well documented that individuals with FAS/FAE may be more likely to become involved with the criminal justice system as they are often impulsive and can be led into anti-social behavior by others. Saskatchewan Corrections and Public Safety will continue training all corrections staff about the effects of FAS/FAE and how to respond effectively to individuals who have FAS or other cognitive impairments.

Emotional and mental health

Many offenders in the correctional system need services to help them address mental health issues. Approximately one to three per cent of the offenders in provincial correctional centres require psychiatric services to treat disorders involving hallucinations or delusions. A review of 2001-2002 risk assessment data from provincial correctional centres has shown that approximately 18% of inmates have a considerable level of emotional needs which would benefit from psychiatric treatment, counseling or cognitive therapy.

---

[24] Saskatchewan Health. (February, 2002). "Alcohol and Drug Centre Client Profile: Individuals in Recovery Services 2000/2001" Focus Sheet 2001-3.

Providing mental health services is a major challenge for Saskatchewan Corrections and Public Safety. Each correctional centre has access to limited psychiatric services. These services tended to address immediate emotional issues or symptoms of underlying problems. The Saskatoon Correctional Centre has been fortunate in that a staff psychologist has been, on a weekly basis, assessing and providing counseling to over 100 inmates and to offenders who are receiving supervision or serving sentences in the community.

Access to psychological and psychiatric services by inmates in smaller correctional facilities and offenders under community supervision has been limited to services provided by local mental health clinics. These clinics, which also provide services to the general public, prioritize clients who have the highest level of need. The Department will continue partnering with mental health agencies and counseling services, where available, to address the emotional and psychiatric needs of offenders as part of their rehabilitation and reintegration planning.

Responding to interpersonal violence and sexual exploitation

While it is vital to work over the long term to address the social and economic factors that influence offending and victimization, it is also necessary to respond appropriately when crime occurs and to focus on serious crimes that are especially troubling. The departments are currently focusing their resources on the issue of interpersonal violence - particularly family violence and the sexual exploitation of children.

Interpersonal Violence

Violent, interpersonal crime is a more serious problem in Aboriginal communities than in non-Aboriginal communities. Much of this violent crime involves family violence and sexual abuse. Some commentators have suggested that levels of family violence in Canadian Aboriginal communities have reached epidemic proportions.[25] Aboriginal peoples are more likely than other Canadians to report violence by a spouse (20% compared to 7%).[26] Moreover, Aboriginal women are victimized to a greater degree than all other populations - 25% of Aboriginal women report being victimized, which is twice the rate of Aboriginal men and three times the rate of non-Aboriginal women and men.[27]

In addition to the trauma experienced by the victim in cases of interpersonal violence, children often witness this violence. Children have witnessed domestic violence in 47% of Aboriginal households, compared to 37% of non-Aboriginal households. In up to 10% of assaults, the child was harmed or threatened.[28] In addition to immediate physical harm and long-term emotional trauma for victims, family violence can result in a continuing cycle of abuse across many generations. There is research indicating that children in homes where family violence occurs are at greater risk to be violent or to be victims of domestic violence later in life.

In keeping with a community-owned approach, the departments have a role in supporting community efforts to deal effectively with sexual abuse and family violence. For example, Saskatchewan Justice supports Aboriginal Family Violence Initiatives, offers training for workers dealing with family violence and has begun working to educate communities about the options available to people who are experiencing family violence and how communities can help. Adult Corrections works with Mental Health services to deliver Alternatives to Violence programs for offenders convicted of spousal assault.

There have been questions raised about whether all provisions of *The Victims of Domestic Violence Act* apply on reserves. This is a major challenge for Saskatchewan Justice. The Act provides for a Justice of the Peace to issue emergency intervention orders in cases where they believe domestic violence has occurred and the order is necessary to immediately protect the victim. As well, the alleged abuser can be removed from the home for a period of time, regardless of who has "exclusive possession" of the home. Although two evaluations of The *Victims of Domestic Violence Act* showed significant community support for this legislation, since homes on reserve are owned by the First Nations bands, some argue that residence rights fall under the jurisdiction of the federal *Indian Act*, which would take precedence over those provisions of the provincial *Victims of Domestic Violence Act*. The Department will continue working with First Nations governments and federal departments, including Indian and Northern Affairs and Federal Justice, to address this problem. There is also a role for the departments in working with community organizations and other stakeholders to develop provincial protocols about family violence, assessing the impact of *The Victims of Domestic Violence Act*, supporting programs for children who witness domestic violence, and continually improving family violence programs and sex offender treatment programs.

---

[25] The Aboriginal Nurses Association of Canada and the Royal Canadian Mounted Police. (May, 2001). *Family Violence in Aboriginal Communities, A Review*. The Aboriginal Nurses Association of Canada and Royal Canadian Mounted Police.

[26] CCJS. (June 2001). *Family Violence in Canada: A Statistical Profile 2001*. Ottawa: Statistics Canada, page 28.

[27] ibid. page 29.

[28] CCJS. (June 2001). "Children Witnessing Family Violence". *Juristat* 21 (6).

The sexual exploitation of children

The sexual exploitation of children is a growing concern, particularly in urban centres and Aboriginal communities. Protecting children from sexual exploitation and holding sex trade consumers accountable while meeting the children's needs and protecting their rights is a major challenge. Saskatchewan Justice recently launched the Vehicle Impoundment Against Sexual Exploitation (VISE) Program and proclaimed *The Highway Traffic Amendment Act*. This legislation creates new offences for continually driving or parking in areas where sexual exploitation is known to occur.

The VISE Program provides police with new powers to seize and impound vehicles used by sex trade consumers committing exploitative offences. If the person is convicted, their driver's license may be suspended and their vehicle may be forfeited. As of November 20, 2002, 71 vehicles have been seized as part of the VISE program, three vehicles have been forfeited to the Crown and four people have had their drivers licences suspended. These results indicate that the programs are holding sex trade offenders accountable for their actions.

Responding to the needs of victims

Government, the public and stakeholders in the criminal justice system have become more aware over the past several years that the needs and interests of victims should be a central part of the criminal justice process. The province began working on addressing the needs of victims in the mid-1980s.

In 1996, Victims Services Branch organized meetings in Prince Albert, Regina and Saskatoon with 27 Aboriginal organizations and victims of crime in order to receive feedback about how victims services programs could be more responsive to their needs. As a result, Saskatchewan Justice developed crime prevention programs for Aboriginal youth, family violence initiatives for Aboriginal families, Aboriginal Resource Officer programs and victims services programs in northern Saskatchewan.

The Victims Compensation Program provides compensation to victims of violent crimes to cover the cost of expenses such as counseling, ambulances, lost wages, and medical and dental expenses not covered by an insurance plan. In 1996 Victims Services Branch extended the definition of a "counselor" to include Aboriginal Elders. This recognizes the value of using traditional cultural practices to help victims of crime in their healing process.

Police-affiliated programs are the core service for victims in Saskatchewan. These programs, which operate out of RCMP detachments and municipal police stations, receive referrals directly from the police. Saskatchewan Justice is in the process of evaluating its police-affiliated victim services and Aboriginal resource officer programs, which focus on supporting Aboriginal victims of crime. Initial findings show these programs are meeting the needs of the victims in a timely and appropriate way throughout the criminal justice process.

Annual data shows that in 2001-2002, 320 volunteers gave 24,000 hours to assist 16,000 victims of crime. However, more needs to be done to make these services more available in the north, on-reserve and in rural Saskatchewan. It has been especially difficult to provide victims services on reserves because the federal government has been unwilling to commit funding. While victims living in reserve communities do receive victims services through off-reserve programs, the lack of ongoing federal funding is an important issue for on-reserve communities with high levels of victimization. The departments will continue to discuss this issue with the federal government.

Improving justice services in northern Saskatchewan

The northern part of the province falls within the Northern Administration District - practically speaking, communities north of the 54th parallel. This huge area accounts for half of the province's geography, yet according to 1996 Census data it has a population of only 31,104. Many communities are small and isolated, and it is often difficult to travel there during the winter. This leads to many challenges in delivering services. Furthermore, there are limited local resources to address high levels of serious activity such as sexual abuse, family violence and substance abuse. The departments have initiated a number of projects that are working to address these issues.

Supporting Community Police Boards

Policing in northern Saskatchewan has a number of unique challenges. The police cope with high workloads and the need to prioritize cases that often involve very serious crimes. Saskatchewan Justice views community police boards as one key to addressing many issues. Community police boards involve community members working with the RCMP to develop priorities for policing in their communities. Boards are active in many northern communities and are encouraged to take an active role in matters such as orienting new RCMP members, bringing community concerns to the attention of the detachment, and problem-solving about the types of crimes that are common in the area. The Department will continue working with SANC, the RCMP and community police boards to improve the relationship between police and the community, to address issues of victimization and offending, and to link with crime prevention programs being developed in many northern communities through the federal National Crime Prevention Centre.

Providing Victims Services in northern Saskatchewan

When Saskatchewan Justice began developing victims services in 1992 the program responded to communities that immediately came forward with proposals demonstrating community readiness, rather than reaching out to communities that might have the highest needs or crime rates, such as some Aboriginal or northern communities. There are victims services programs now operating in the north, but services are not available in some areas, particularly in the Athabasca region. Working with the federal government, other provincial government departments and agencies, the Prince Albert Grand Council and other stakeholders will be vital to increase the availability of victims services in northern Saskatchewan.

Reducing Delays in the Courts

The Department of Justice receives many complaints about the length of time it takes to hear cases, especially in northern Saskatchewan. The north accounts for a significant percentage of cases before the courts and the time it takes to resolve these cases is often longer than the provincial average. For example, the average elapsed time for youth cases in the province is 125 days from the first court appearance to disposition. This varies from 54 days in Swift Current to 166 days in Lloydminster. The average elapsed time in youth cases involving serious violent offences is 160 days, ranging from 129 in Regina to 197 in the north.

In the north, court only travels to some locations once or twice a month. A large volume of cases may cause delays, and hearings may be further delayed if the court is unable to go to a remote location because of bad weather. It is recognized that this places additional emotional stress on the accused person, and may result in them being kept in remand for an extended period of time before the judge makes a decision about whether they can be released on bail before their trial is held.

To help address this challenge, Saskatchewan Justice is exploring the use of videoconferencing in northern communities. This technology could enable a judge to make a decision in a bail hearing without needing to transport the accused person away from their home community to one of the cities, or wait until the judge travels to the community.

The Department is also working to expand the number of Aboriginal Justices of the Peace in order to reduce the delays in having criminal cases heard throughout the province. Justices of the Peace might assume some of the mundane matters of the workload of judges. For example, there is a pilot project in the Swift Current Provincial Court in which a Justice of the Peace hears docket appearances, summary and traffic matters, leaving the judges to deal with the more serious matters and procedures after the plea. There has been some difficulty in attracting Aboriginal Justices of the Peace, in part because they might be working in small communities where they are more likely to know accused persons and their families.

Providing corrections in northern Saskatchewan

One of the challenges facing Saskatchewan Corrections and Public Safety is how to provide corrections in northern Saskatchewan. Due to a lack of space in correctional centres and police holding cells, northerners who are being held on remand while awaiting trial, or who are sentenced to a term of imprisonment, are often transported out of northern Saskatchewan. When this happens, the accused person or offender is isolated from family and community support.

Correctional camps in the Waden Bay and Besnard Lake areas and a community correctional centre in Buffalo Narrows provide northern offenders with an alternative to serving a term of imprisonment in Prince Albert. Adult Corrections is also working with First Nations communities to develop ways in which the community can assist in rehabilitating offenders. For example, some communities have agreements with the Department for the supervision of offenders.

In some places, partnerships are being formed with First Nations to offer programs that address the risks and needs of offenders.For example, the Lac La Ronge Indian Band co-facilitates a sex offender program. The Department is interested in working with other Aboriginal communities to develop similar initiatives.

EMERGING ISSUES

Gangs and organized crime are emerging issues facing some Saskatchewan communities. The major forms of organized crime in Saskatchewan involve outlaw motorcycle gangs and street gangs. Organized crime groups and gangs are involved in a wide range of offences, including prostitution, drug trafficking, firearms trafficking, illegal gambling, car theft, organized shoplifting, fraud, forgery, and counterfeiting.

Drug trafficking by gangs and organized crime rings is also a major problem. Northern communities are deeply concerned about the use of inhalants, particularly by young people, and the increased availability of drugs in the north.

The major urban centres in the province now have integrated serious crime units that involve the municipal police services, the RCMP, and other organizations. These units are involved in developing a comprehensive, collaborative, and effective response to identifying organized crime, preventing organized crime activities and interrupting the profits of organized crime by seizing illicit goods and money.

Gangs, which are often involved in organized crime, may function at a formal or informal level. Street gangs in Saskatchewan include loosely structured neighborhood crime groups as well as highly structured gangs with distinctive leadership structures and rules. Many street gangs have also created youth gangs to assist the regular members with some of their criminal activities.

There are many problems associated with street gangs. Gangs are extremely aggressive towards police and new members of gangs within correctional centres are often willing to commit acts of violence to demonstrate their loyalty and earn "respect". As well, witnesses have been intimidated in the community and the courts. This is a disturbing problem that affects the quality of life in our inner-city communities and reserves around the province. Gang activity also contributes to re-offending and to the recruitment of young people into criminal lifestyles.

Saskatchewan Justice is addressing this threat through partnerships with the FSIN, the federal government, the RCMP and municipal police services. The FSIN has recognized the seriousness of this threat and has launched a new initiative to deal with gang recruitment. Saskatchewan Corrections and Public Safety is working with Saskatchewan Justice and the police to address the issue of gangs in correctional centres.

CONCLUSION

Saskatchewan Justice and Saskatchewan Corrections and Public Safety are working to support communities in efforts to address victimization and offending. While these issues occur to some extent in all communities throughout the province, the level of crime tends to be much higher in some Aboriginal communities, especially in the north, on reserves, and in the inner city.

The high levels of victimization and offending in some Aboriginal communities are the result of disadvantaged social and economic conditions as well as historical processes that have affected Aboriginal peoples. Since the reasons for offending include personal and social factors, it is necessary to address these problems at the individual, community and societal levels.

The departments are using four strategies to address the problems of victimization and offending. These strategies, which are based on consultation with communities, address factors at the community and departmental level as well as focusing on effective services for victims and offenders. The strategies include:

- building community ownership and capacity to address the factors associated with offending and victimization;
- developing partnerships;
- adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal people and meets their needs for safety and security; and
- improving the effectiveness of services to victims, offenders and communities.

Although there has been steady progress over the past decade in building partnerships and developing programs that address the problems of victimization and offending, we cannot be satisfied with the progress we have made so far. There are a number of challenges remaining. In terms of building community ownership and capacity, the departments will continue to explore ways of supporting communities in identifying and addressing local issues. It is also vital to address the broader social and economic factors associated with offending and victimization, and this cannot occur through the efforts of the justice system alone. This is critical to the long-term health and well-being of the province. The crime rate may continue to rise unless steps are taken to deal with social disadvantage and to intervene with the growing numbers of young people who are most at-risk of coming into contact with the criminal justice system.

Over the past decade in particular, the departments have been building partnerships with communities, community-based organizations and Aboriginal governments as well as other departments and institutions in the justice system. We have learned that good partnerships require time, effort and commitment, and that their success depends on involving all of the stakeholders affected by an issue. While we have built some strong partnerships with Aboriginal governments and organizations in terms of delivering services, there is more work to do on involving Aboriginal peoples in the development of justice policies. We will also continue working with other provincial and federal government departments to develop comprehensive and integrated services.

This submission has identified a number of areas where work is needed to provide services to victims, offenders and communities. The departments will work to increase the use of restorative justice and alternative measures and expand the use of community policing. Saskatchewan Corrections and Public Safety is working to increase the effectiveness of programs that address the risks and needs of offenders and reduce re-offending. Some of the major challenges in this area include addressing the serious issues of alcohol and drug abuse, the need for psychiatric and psychological services, and providing programs for female offenders. Saskatchewan Justice is also working to address the needs and interests of victims, which includes ensuring that Aboriginal people can access victims services programs throughout the province.

There are a number of particular challenges in delivering justice services in northern Saskatchewan. Court delays, access to correctional services and access to victims services are some of the major issues. The departments are also exploring ways of dealing with serious crime issues such as family violence and the sexual exploitation of children, as well as the emerging issues of drugs, gangs and organized crime.

Finally, adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal people and meets their needs for safety and security is perhaps the most serious challenge we face. We are working toward increased trust and respect between Aboriginal peoples and the justice system, but more is required. In particular, we need to ensure that the policies, practices, and attitudes within the justice system are not barriers to Aboriginal peoples. We also need to hire more Aboriginal employees to work in the justice system, ensure that complaints are dealt with appropriately and that departmental staff are educated about racism and cross-cultural sensitivity.

The issues of racism and the need to build trust between Aboriginal and non-Aboriginal peoples go beyond justice system staff or officials. There is a pressing need to promote trust, harmony and cooperation between all Aboriginal and non-Aboriginal peoples in the province. As a growing percentage of the provincial population is Aboriginal, relations between Aboriginal and non-Aboriginal peoples will become increasingly important to the health and strength of our communities and economy. While there is a role for justice officials to play in addressing this issue, it must become an issue of vital concern to all provincial citizens.

Saskatchewan Justice and Saskatchewan Corrections and Public Safety believe that - by working together toward a common vision of safe, secure communities - it is possible to reduce the level of crime, victimization and offending in Saskatchewan communities. We look forward to working with all Saskatchewan people to achieve this vision.

REFERENCES

Aboriginal Corrections Policy Unit. (2002). *Mapping the Healing Journey*. Ottawa: Solicitor General of Canada.

The Aboriginal Nurses Association of Canada and the Royal Canadian Mounted Police. (May, 2001). *Family Violence in Aboriginal Communities, A Review*. The Aboriginal Nurses Association of Canada and Royal Canadian Mounted Police.

Braithwaite, John. (1989). *Crime, Shame and Reintegration*. Cambridge University Press.

Canadian Centre for Justice Statistics. (October, 2002). "Pilot Analysis of Recidivism Among Convicted Youth and Young Adults, 1999/00". *Juristat* 22 (9).

Canadian Centre for Justice Statistics. (June, 2001). *Profile of Aboriginal Peoples in Canada*. Ottawa: Statistics Canada.

Canadian Centre for Justice Statistics. (June, 2001). "Children Witnessing Family Violence". *Juristat* 21 (6).

Canadian Centre for Justice Statistics. (November, 2000). "Criminal Victimization in Canada, 1999". *Juristat* 20 (10).

Canadian Centre for Justice Statistics. (2000). *Police-Reported Aboriginal Crime in Saskatchewan*. Ottawa: Statistics Canada.

Department of Indian Affairs and Northern Development. (December, 2002). *Population Projections of Registered Indians, 1998-2008*. Ottawa: Department of Indian Affairs and Northern Development.

Dowden, C. & Andrews, D.A. (1999). "What Works in Young Offender Treatment: A Meta-Analysis". In *Forum on Corrections Research* 11 (2).

Federation of Saskatchewan Indian Nations. (March, 1999). *Strategic Plan for First Nations Corrections 2000-2004*.

Government of Canada, Government of Saskatchewan & Federation of Saskatchewan Indian Nations. (April 4, 1985). *Reflecting Indian Concerns and Values in the Justice System*. Report from the Joint Canada-Saskatchewan-FSIN Justice Studies.

LaPrairie, Carol. (2001). *Aboriginal Over-Representation in the Criminal Justice System: A Tale of Nine Cities*. Ottawa: Department of Justice Canada.

LaPrairie, Carol. (1995). *Seen But Not Heard: Native People in the Inner City*. Ottawa: Government Services Canada.

Latimer, Jeff, Craig Dowden and Danielle Muise. (2001). *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*. Ottawa: Research and Statistics Division, Department of Justice Canada.

Leschied, A. (May, 2000). "Informing Young Offender Policy in Current Research: What the Future Holds". In *Forum on Corrections Research* 12 (2).

McGuire, J., & Priestly, P. (1995). "Reviewing 'What Works': Past, Present and Future". In *What Works: Reducing Reoffending, Guidelines From Research and Practice*. New York: John Wiley & Sons Ltd.

Office of the Saskatchewan Provincial Ombudsman. (November, 2002). *Locked Out: Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres*. Available at http://www.legassembly.sk.ca/offices/ombuds.htm

Saskatchewan Health. (February, 2002). "Alcohol and Drug Centre Client Profile: Individuals in Recovery Services 2000/2001". Focus Sheet 2001-3.

Saskatchewan Indian Justice Review Committee. (Judge Patricia Linn, Chair). (1992). *Report of the Saskatchewan Indian Justice Review Committee.* Regina: Queen's Printer.

Saskatchewan Métis Justice Review Committee. (Judge Patricia Linn, Chair). (1992). *Report of the Saskatchewan Métis Justice Review Committee.* Regina: Queen's Printer.

Saskatchewan Women's Secretariat. (November, 1999). *Profile of Aboriginal Women in Saskatchewan.* Regina: Saskatchewan Women's Secretariat.

Skogan, Wesley B. (September, 1996). *Evaluating Problem-Solving Policing: The Chicago Experience.* Paper presented at the Problem-Solving Policing as Crime Prevention Conference in Stockholm, Sweden.

Statisics Canada. (1996). *Census of Population.* Ottawa: Statistics Canada.

Tjepkema, Michael. (2002). "The Health of the Off-reserve Aboriginal Population" in *Supplement to Health Reports, Vol. 13.* Ottawa: Statistics Canada.

Department of Justice Performance Plan

Department of Corrections and Public Safety Performance Plan

SECTION 3:

PRESENTATION TO THE COMMISSION ON FIRST NATION AND METIS PEOPLE AND JUSTICE REFORM

CORRECTIONAL SERVICE OF CANADA
MAY 2003

In Saskatchewan, the Correctional Service of Canada has the highest proportion of Aboriginal offenders in the country. Over the past several years CSC has taken many measures to promote a correctional process that will respond to the needs of the Aboriginal offenders in our care as well as to the Aboriginal communities to which these offenders belong.

Among the measures we have taken, there are many that have had important impacts on the delivery of services to Aboriginal offenders. We know as well, that there are important issues we must yet improve upon or deal with in order for us to say that we are truly providing a service that responds to the needs of the Aboriginal community and the Aboriginal offenders.

Our objective in making this presentation to the Commission is to share with the Commission information about those initiatives that we feel have impacted positively on the safe reintegration of Aboriginal offenders. We also wish to provide comment on those areas where we can do a better job, and on those areas where CSC can contribute to the larger social agenda and criminal justice system that impacts on Aboriginal people in this province.

In so doing, we will keep in mind the three questions the Commission has asked:

- What concerns do you have with the justice system?
- What examples of successes or positive programs have you seen?
- How do you think the justice system can be improved?

SECTION 1 Mandate, Roles, and Responsibilities

SECTION 2 The Federal Aboriginal Offender Population

SECTION 3 Promoting a Correctional System Responsive to the Needs of Aboriginal Offenders

SECTION 4 Community based activities / Looking to the future

SECTION 1 - MANDATE, ROLES, AND RESPONSIBILITIES

STRUCTURE

The purpose of the federal correctional system, as articulated in Section 3 of the Corrections and Conditional Release Act 1992 is:

> *'..to contribute to the maintenance of a just, peaceful and safe society by:*
>
> (a) *carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and*
>
> (b) *assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community."*

The Correctional Service of Canada, an agency within the Portfolio of the Solicitor General, is responsible for administering sentences for offenders serving sentences of two years or more. The Portfolio also includes the Solicitor General Secretariat, the Royal Canadian Mounted Police, the National Parole Board, the Canadian Security Intelligence Service and the Office of the Correctional Investigator.

CSC currently manages 52 federal penitentiaries; 17 community correctional centres for offenders on conditional release; and 71 parole offices. In addition to federally-operated facilities, CSC manages a wide variety of exchange of service agreements with provincial correctional systems and with Aboriginal communities to provide correctional services and programs for federal offenders. CSC also contracts with non-government agencies which operate 170 community-based residential facilities to address the accommodation needs of released offenders. Each day, there are approximately 21,000 offenders under federal jurisdiction, of whom 12,600 are incarcerated. The remainder are under some form of supervision in the community.

Across the country, CSC is broken into 5 Regions; each managed by a Deputy Commissioner. The Prairie Region comprises Northern Ontario, Manitoba, Saskatchewan, Alberta and the Northwest Territories. The following chart shows the breakdown of offenders in the Prairie Region and in Saskatchewan:

	Institution	M	F	Community	M	F
Region	3123	2988	135	1965	1839	126
Aboriginal	1328	1251	77	619	569	50
Saskatchewan	835	802	33	320	297	23
Aboriginal	512	485	27	166	148	18

The following chart shows the detailed population breakdown by facility in Saskatchewan:

Population Breakdown for Saskatchewan by Institution and District Office								
	First Nation		Metis		Inuit		Total Aboriginal	
	#	% of Pop	#	% of Pop	#	% of Pop	#	% of Pop
Sask Pen	246	47.95%	73	14.23%	0	0%	319	62.18%
OOHL	20	71.43%	4	14.29%	0	0%	24	85.72%
Riverbend	42	42.00%	11	11.00%	0	0%	53	53.00%
RPC	68	36.75%	29	15.67%	5	2.70%	102	55.12%
Sask District	124	39.49%	37	11.78%	2	0.63%	163	51.90%

Saskatchewan has the highest proportion of Aboriginal offenders in Canada. The following chart shows the population breakdown for Saskatchewan compared to Manitoba, Alberta and Canada as a whole:

Aboriginal Inmate Population: Comparing Sask/Alta/Man with National Population								
	National		Saskatchewan		Manitoba		Alberta	
	#	% of Pop	#	% of Pop	#	% of Pop	#	% of Pop
First Nation	1630	12.10%	376	45.52%	206	34.04%	338	19.76%
Metis	676	5.03%	117	14.16%	97	16.03%	177	10.35%
Inuit	89	0.66%	5	0.60%	1	0.16%	10	0.68%
Total Aboriginal	2395	17.79%	498	60.28%	304	50.23%	525	30.70%

Conditionally Released Aboriginal Offenders: Comparing Sask/Alta/Man with National Population								
	National		Saskatchewan		Manitoba		Alberta	
	#	% of Pop	#	% of Pop	#	% of Pop	#	% of Pop
First Nation	812	8.69%	124	39.49%	115	24.46%	158	13.49%
Metis	327	3.50%	37	11.78%	61	12.97%	101	8.62%
Inuit	39	0.42%	2	0.63%	0	0.00%	14	1.19%
Total Aboriginal	1178	12.61%	163	51.90%	176	37.43%	273	23.30%

*numerical differences between the above three charts and the chart on page 3 are attributable to different data sources.

MANDATE

Consistent with the mandate given us by the Corrections and Conditional Release Act, our Mission reads as follows:

> *"The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control."*

The Mission provides focus for CSC in the two key areas of:

1. The safe care and custody of offenders; and
2. The safe reintegration of offenders back into society.

Safe care and custody of offenders is critical to our mandate to protect society, but in the long run, the safe reintegration of offenders is the aspect of our Mission that is paramount. As shown by the figures in the charts above, safe reintegration of the Aboriginal offenders in our care and custody is a critical piece of the work we do, and it is therefore the aspect of reintegration that we wish to focus on in our discussions with the Commission.

In fact, of the four Corporate Objectives CSC had set for itself over the 2002/2005 period, two of them are directly related:

1. To maximize the potential of offenders to safely reintegrate into the community.

> The Service will ensure that offenders are well prepared for safe and timely release and enhance their potential to succeed in the community. Our policies, programs and services will be gender specific and tailored to reflect and respect the diversity of our offenders and the communities from which they come. We will engage the members of the community and our national and international partners in the development of our policies and practices. We will encourage citizens to become actively involved in our efforts to contribute to the safety and well being of communities. We will keep staff and citizens informed about the federal correctional system, its commitments and its results.

2. To contribute to the reduction of the incarceration rate of Aboriginal offenders

> The Service will work with Aboriginal peoples, partners and the community to advance Government initiatives aimed at reducing the over representation of Aboriginal peoples within the criminal justice system within one generation, as stated in the Government's Throne Speech delivered in January 2001. We will demonstrate leadership by sharing knowledge and expertise thus contributing to crime prevention efforts. We will create specific strategies and undertake collaborative initiatives to minimize the number of aboriginal offenders returning to criminal activity and to institutions. Working with Aboriginal peoples, we will ensure a continuum of Aboriginal-specific institutional and community developments in corrections.

Our ability to assist with the safe reintegration of Aboriginal offenders back into the community is dependent on our success in achieving these corporate objectives. The process of reintegration is a complex one, involving the interplay of a variety of resources and sectors, both public and government. Our business line description of the reintegration process describes the interplay of resources within CSC:

> 'Provision of a range of services and programs both in the institutions and community settings designed to promote the reintegration of offenders, including case management, psychological and chaplain services, residential services, academic and vocational training, employment and occupational development, living skills, substance abuse and other personal development programs and other programs designed to address specific cultural, social, spiritual and other personal needs.'

REINTEGRATION

In the early 1990's, CSC developed a Correctional Strategy to bring together key activities that promote safe reintegration. There are four main components:

- A comprehensive, baseline offender intake assessment to determine security needs, potential for safe reintegration and programming/service needs. This assessment, using research-based tools validated with the federal population, is the basis for developing a multi-disciplinary case plan for treatment and intervention throughout the sentence.
- Institutional intervention to address individual risk for reoffending, including the delivery of research-based programs that are demonstrated to be effective in reducing recidivism. A multi-faceted program model offers a broad range of institutional programs varying in intensity and designed to match offenders' needs to enhance treatment effectiveness.
- Risk reassessment for correctional decision-making throughout the sentence, to address public safety and to ensure the least restrictive measure consistent with public safety.
- Community supervision to provide continuity of the individual's correctional plan developed in the institution and to monitor offender progress, based on his/her assessed potential for safe reintegration.

The challenge for our correctional system is to provide services in each of these key areas that are relevant to the needs of Aboriginal offenders. Risk assessment, for example, assesses historical factors as one predictor of risk. Aboriginal offenders tend to have more severe and extensive histories of violence and, as a result, this will result in a higher level of risk using current actuarial tools. The issue of risk assessment for Aboriginal offenders is one that CSC is in the process of examining to determine if there are any specific cultural factors that should be taken into account.

The programming we offer to offenders has the reduction of re-offending behaviour as the primary objective. The correctional programs we provide to offenders are interventions designed to address those factors that contribute directly to criminal behaviour. The most prominent contributing factors are cognitive deficiencies (the mental process by which learning takes place), substance abuse, illiteracy, mental illness, sexual deviancy, family violence and antisocial values, attitudes and behaviours. An important initiative for CSC has been to develop programs that respond to the traditional and cultural values of Aboriginal offenders, and at the same time are seen to address these contributing factors. These efforts will be discussed further in this document.

The final element, that of community supervision, will be discussed throughout this document. We recognize that to achieve success in the safe reintegration it is essential that Aboriginal communities be active partners with CSC in assisting offenders while in the correctional system and beyond.

The Corrections and Conditional Release Act recognizes this and provides direction to CSC through the following sections:

> 80. Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders.
>
> > Not only, then, must CSC provide programming that respond to the traditional and spiritual needs of offenders for good correctional reasons of promoting safe reintegration; it is a legal responsibility.
>
> 81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.

> Section 81 provides opportunities for CSC and Aboriginal communities to enter into formal partnerships. CSC has established some agreements that provide for the care and custody of Aboriginal offender. This is unique because it actually provides a means to transfer inmates from CSC custody to that of the Aboriginal community.

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

(a) adequate notice of the inmate's parole application; and

(b) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

> Section 84 places a legal responsibility on CSC to provide the Aboriginal community with the opportunity to participate in the release planning process. Engaging the community is a good correctional practice that CSC should be following in any event. This legislation reinforces that fact with respect to the engagement of the Aboriginal community in this process.
>
> Some of CSC's activities in this area will be discussed further in this document.

SECTION 2 - THE FEDERAL ABORIGINAL OFFENDER POPULATION

The fastest growing segment of Canada's federal offender population are representative of the most socially-marginalized populations in Canada (e.g. Aboriginal people, women living in poverty and substance abusers) presenting many challenges for both institutional population management and reintegration management. The diversity of this population appears to reflect the cumulative effect of socio-economic trends, demographic changes, alternative measures and diversion programs, and sentencing reforms.

Continued over representation of Aboriginal peoples in Canada's criminal justice system is a major concern. While they represent approximately 13% of Saskatchewan's population according to Statistics Canada, they comprise 60% of the inmates in our federal institutions. When you consider the characteristics of the people who come into conflict with the law, it is no surprise. Poverty, lack of education and age demographics within the Aboriginal population are all consistent with the characteristics of our federal offender population.

This is not to suggest that these measures alone are the determinants of the over representation of Aboriginal people in our criminal justice system. Carol LaPrairie[1] proposes a multi-dimensional model incorporating cultural, structural, historical and contemporary dimensions. She notes that the demise of traditional interdependencies accompanied by an increased dependency on external institutions is at the heart of this model.

The fact is federal offenders come from our communities and the majority will return to those same communities. CSC has introduced, and will continue to introduce, programs and services to address the needs of First Nation and Metis offenders to the best of our ability, but these offenders will return to the community at some point. As LaPrairie[2] points out, there are two types of reintegration:

- Reintegration into home communities which are also the environments which caused their initial problems; or
- Reintegration into families and communities which promote behavioural changed and the adoption of pro-social attitudes.

To assess the magnitude of the challenge we face in achieving the second type of reintegration we need only look at the Canada West Foundation[3] report's findings on the state of our Aboriginal population in Saskatoon:

- The percentage of the Aboriginal population that are single parents is 10.8% compared to 3.7% for the non-Aboriginal population;
- 48% of the Aboriginal population have attained less than grade 12 compared to 32% for the non-Aboriginal population;
- 25.1% of the Aboriginal population are unemployed compared to 6.8% of the non-Aboriginal population; and,
- 51.3% of the Aboriginal population 15 years and over report a total 1995 income below $10,000 compared to 27.3% of the non-Aboriginal population.

The offender who returns to the first type of reintegration environment starts with a disadvantage. We see positive change as a result of the interventions carried out in our institutions, however the ultimate success in preventing a re-offence is dependent on the support structure in the community to which an offender returns. If the positive behaviours learned through CSC programming cannot be maintained and reinforced, the individual is at risk of returning to criminal behaviour.

[1] LaPrairie, 1996

[2] LaPrairie, 1996

[3] Canada West Foundation, 2001

The Nechi Institute[4] in their research 'Healing, Spirit and Recovery; Factors Associated with Successful Reintegration' noted that offenders who succeeded attributed their success to the influence of spirituality. Other factors were present, however, suggesting that the overall well being of the community into which they reintegrated played an important role in their success.

SOME CHARACTERISTICS OF ABORIGINAL OFFENDERS

As is evident in the Canadian population generally, the population of Aboriginal offenders has unique characteristics that set it apart from the non-Aboriginal population. Although the offender population has characteristics that are common (substance abuse and addictions; lower levels of education; previous criminal history; poor employment history; and dysfunctional family history) the population of Aboriginal offenders stands out as having higher incidences of many of these characteristics:

- 72% of the Aboriginal offender population in the Prairie Region are serving sentences for offences under Schedule 1 of the CORRECTIONS AND CONDITIONAL RELEASE ACT compared to 55% of the non-Aboriginal offender population. This is significant, as Schedule 1 offences are violent offences and offences against the person. This impacts on risk and need assessment and on the correctional planning process, often resulting in a requirement for more intensive programming to address needs.
- CSC assesses offenders at three levels of risk and need: low, medium and high. 63% of Aboriginal offenders are assessed as both high risk and high need offenders compared to 46% of the non-Aboriginal offender population assessed as high risk/high need.
- Despite the factors described above, Aboriginal offenders tend to be sentenced to shorter periods of incarceration on average than non-Aboriginal offenders. 63.8 % of Aboriginal inmates in the Prairie Region are serving sentences of 5 years or less compared to 60% of non-Aboriginal inmates.
- 20% of Aboriginal offenders in the Prairie Region are sentenced to a sexual offence compared to 15% of non-Aboriginal offenders. Again, this is significant as treatment issues for sex offending behaviour may require greater intensity. Public attitudes toward anyone with a sex offence present special challenges for reintegration.
- Aboriginal offenders have experienced greater dislocation from family. This can be seen in the high numbers of Aboriginal inmates who have been involved in the child welfare system at some point in their lives. Trevethan[5] found that 63% of Aboriginal inmates compared to 36% of non-Aboriginal inmates have been involved with the child welfare system. Also, 50% of Aboriginal inmates reported an unstable adolescence compared to 33.3% of non-Aboriginal inmates.
- Corrado and Cohen[6] found that other indicators of stability, such as family violence, drug/alcohol problems in the same home environment, were evident in young offenders. His research shows that 53.3% of Aboriginal males are victims of physical abuse and 75% of Aboriginal females are victims, while 44.5% of non-Aboriginal Males and 55.3% of non-Aboriginal females were victims. 19.3% of Aboriginal males and 57.6 %of Aboriginal females were subject to sexual abuse, where as 17.3% of non-Aboriginal males and 33.8% of non-Aboriginal females have had the same experience. The statistics for the Aboriginal youth offender show a troubling high rate of instability in their families as compared to their non-Aboriginal counterparts.
- 76% of Aboriginal offenders were identified as having some needs in the area of substance abuse. When a link was made to the substance abuse as a contributing factor to their offence, 63% of Aboriginal offenders were found to meet that category. Figures for non-Aboriginal offenders are 60% and 41% respectively.

---

[4] Nechi Institute and KAS Corporation Ltd., 1994

[5] Trevethan et al. 2001

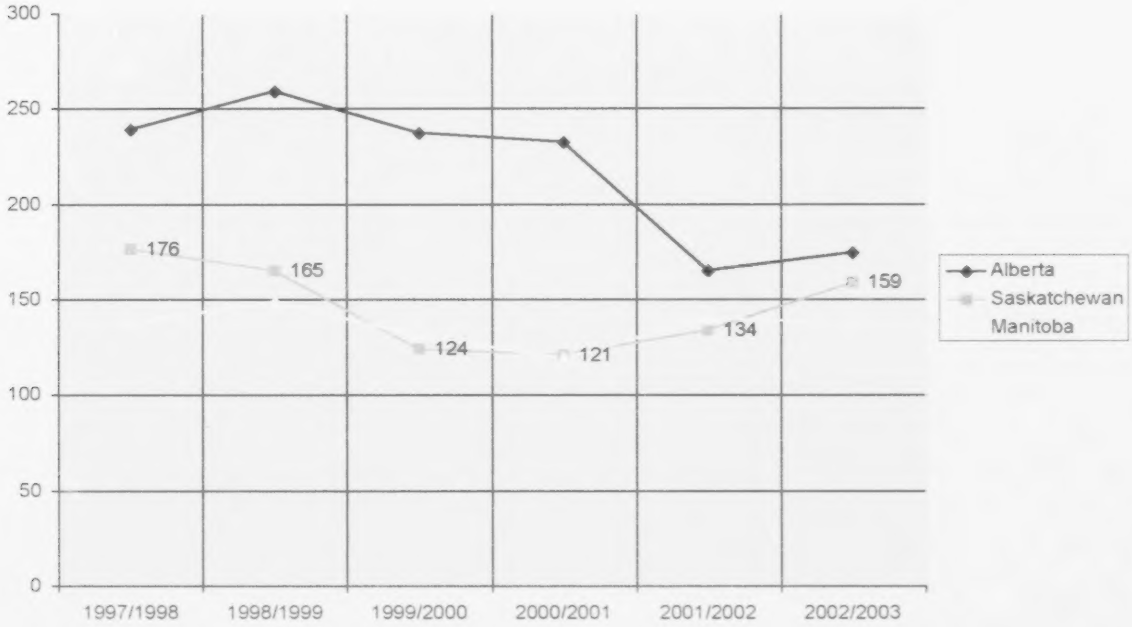
[6] Corrado and Cohen, 2002

- Based on tests administered to inmates at intake, only 13.6% of Aboriginal inmates tested at a grade 12 or higher level, compared to 32.6% of non-Aboriginal inmates. 50% of Aboriginal inmates tested at a level of at least grade 9 to grade 11 completion, compared to 51% of non-Aboriginal inmates. This means that 36.4% of Aboriginal inmates did not test beyond the level of grade 8 academic standing whereas 16.4% of non-Aboriginal inmates did not test beyond grade 8.

SOME BASIC DEMOGRAPHICS

The following chart shows the rate of intake of Aboriginal inmates from the courts over a 6 year period. Following a decline between 98/99 and 2000/01 the trend for admissions in Saskatchewan is again increasing and approaching levels from 98/99. As a percentage of total federal admissions in Saskatchewan Aboriginal offenders accounted for 68% (02/03), 58% (01/02) and 62% (00/01).

Warrants of Committal Aboriginal Offenders by Province



The following chart tracks the location of Aboriginal offenders on conditional release in Saskatchewan. About 65% of Aboriginal offenders reside in Prince Albert, Saskatoon or Regina. Many of the urban residents reside in Community Residential Facilities or at Oskana Centre in Regina on Day Parole or residency condition and some may return to rural communities. While there is a substantial grouping in the major urban centres there are also many Aboriginal offenders in small rural communities or reserves. The data is presented in this manner to show the numbers of communities affected throughout Saskatchewan. Offenders on conditional release have differing needs that must be met, and we must rely on the availability of services in these areas to meet those needs.

ABORIGINAL OFFENDERS ON CONDITIONAL RELEASE IN SASKATCHEWAN BY HOME COMMUNITY

COMMUNITY	INUIT	METIS	FIRST NATION	Grand Total
CHRISTOPHER LAKE	0	2	0	2
CUMBERLAND HOUSE	0	0	2	2
DESCHAMBEAULT LAKE	0	0	1	1
BUFFALO RIVER FIRST NATION	0	0	1	1
DUCK LAKE	0	0	1	1
FORT QU'APPELLE	0	0	2	2
GALLIVAN	0	0	1	1
GREEN LAKE	0	1	0	1
GRENFELL	0	0	1	1
JAMES SMITH FIRST NATION	0	0	1	1
KINISTINO	0	0	1	1
LA RONGE	0	2	3	5
LANGENBURG	0	0	1	1
LEBRET	0	0	1	1
LOON LAKE	0	0	1	1
MAPLE CREEK	0	0	1	1
MEADOW LAKE	0	1	1	2
MELVILLE	0	0	1	1
MISTAWASIS FIRST NATION	0	0	1	1
MOOSE JAW	0	0	1	1
MOOSOMIN	0	1	0	1
MUSKODAY FIRST NATION	0	1	1	2
NIPAWIN	0	0	2	2
NORTH BATTLEFORD	0	0	2	2
PIERCELAND	0	0	2	2
PORCUPINE PLAIN	0	1	0	1
PRINCE ALBERT	0	8	15	23
PRUD HOMME	0	0	1	1
REGINA	0	12	31	43
RHEIN	0	0	1	1
SASKATOON	0	10	32	42
SPIRITWOOD	0	0	1	1
ST. WALBURG	0	0	1	1
STANLEY MISSION	0	0	1	1
WHITEFISH FN HOUSE	0	0	1	1
YELLOW QUILL FIRST NATION	0	0	1	1
YORKTON	0	0	2	2
AHTAHKAKOOP FIRST NATION	0	0	2	2

COMMUNITY	INUIT	METIS	FIRST NATION	Grand Total
KAHKEWISTAHAW FIRST NATION	0	0	1	1
RED PHEASANT FIRST NATION	0	0	2	2
MOOSOMIN FIRST NATION	0	0	2	2
POUNDMAKER FIRST NATION	0	0	1	1
MUSCOWPETUNG FIRST NATION	0	0	1	1
MINISTIKWAN FIRST NATION	0	0	1	1
ONION LAKE FIRST NATION	0	0	1	1
WAHPETON FIRST NATION	0	0	1	1
PIAPOT FIRST NATION	0	0	1	1
PEEPEEKISIS FIRST NATION	0	0	1	1
REGINA	1	0	0	1
Grand Total	1	39	130	170

Note: The highlighted cities includes residential facilities, CCCs & CRFs and not necessarily home addresses..

* Differences in totals between this chart and those on pages 3 & 4 are attributable to different data sources.

The following chart provides an indication of where offenders have been sentenced. The data provides some indication of where the Aboriginal offenders in federal custody and on conditional release resided at the time of the commission of their offence.

Offenders from a Saskatchewan Place of Sentence

CITY	RACE	FEMALE	MALE	Grand Total
BATTLEFORDS	METIS	0	9	9
	FIRST NATION	4	45	49
BATTLEFORDS Total		**4**	**54**	**58**
ESTEVAN	FIRST NATION	1	3	4
ESTEVAN Total		**1**	**3**	**4**
LA RONGE	METIS	0	2	2
	FIRST NATION	0	14	14
LA RONGE Total		**0**	**16**	**16**
LLOYDMINSTER	METIS	0	3	3
	FIRST NATION	0	12	12
LLOYDMINSTER Total		**0**	**15**	**15**
MEADOW LAKE	METIS	1	18	19
	FIRST NATION	0	42	42
MEADOW LAKE Total		**1**	**60**	**61**
MELFORT	METIS	0	5	5
	FIRST NATION	1	16	17
MELFORT Total		**1**	**21**	**22**
MELVILLE	METIS	0	1	1
	FIRST NATION	0	2	2
MELVILLE Total		**0**	**3**	**3**
MOOSE JAW	METIS	0	5	5
	FIRST NATION	0	2	2
MOOSE JAW Total		**0**	**7**	**7**
PRINCE ALBERT	INUIT	1	0	1
	METIS	5	52	57
	FIRST NATION	21	131	152
PRINCE ALBERT Total		**27**	**183**	**210**
REGINA	METIS	0	35	35
	FIRST NATION	15	166	181
REGINA Total		**15**	**201**	**216**
SASKATOON	INUIT	1	0	1
	METIS	2	38	40
	FIRST NATION	11	120	131
SASKATOON Total		**14**	**158**	**172**
SWIFT CURRENT	METIS	2	1	3
	FIRST NATION	6	3	9
SWIFT CURRENT Total		**8**	**4**	**12**
WEYBURN	FIRST NATION	0	1	1
WEYBURN Total		**0**	**1**	**1**
WYNYARD	FIRST NATION	0	10	10
WYNYARD Total		**0**	**10**	**10**
YORKTON	METIS	0	1	1
	FIRST NATION	3	25	28
YORKTON Total		3	26	29
Grand Total		**74**	**762**	**836**

Note: Three highlighted cities are the judicial Centres in Sask. Most Queen Bench sittings at these sites.

Note: Northern cases are usually sentenced in Prince Albert or North Battleford, not necessarily in their home towns.

* the figures in this table reflect the numbers of Aboriginal offenders by sentence location. They do not reflect the numbers of Aboriginal offenders currently in Saskatchewan as offenders may have moved to other provinces, either through transfers as inmates, or while on conditional release. The data also includes offenders

who may not be from Saskatchewan, but who have been sentenced in the province. The data presented provides some indication of the extent to which communities have people from their area sentenced to a federal term of incarceration.

SECTION 3 - PROMOTING A CORRECTIONAL SYSTEM RESPONSIVE TO THE NEEDS OF ABORIGINAL OFFENDERS

The Correctional Service of Canada has established an international reputation in the corrections community as a leader in the application of research based programs and services that promote the safe reintegration of offenders. Our Correctional Strategy provided a framework to integrate our case management, programming and community supervision elements.

This strategy is applicable to all offenders, however CSC has also developed initiatives that will more appropriately respond to the particular needs of Aboriginal offenders. Some of these initiatives will be discussed in this section. We wish to emphasize that the ultimate success of these initiatives will come from our ability to work in co-operation with people from the Aboriginal community in implementing these initiatives. The knowledge and skills reside in the communities. CSC must engage that knowledge and skill in a correctional environment that, by its very nature, is foreign to the culture and values of First Nations and Metis people.

SPIRITUALITY, TRADITION AND CULTURE

The role of spirituality, tradition and culture has come to play an important role within CSC in our efforts to promote the safe reintegration of Aboriginal offenders. Organizationally, CSC has much to learn about the protocols and traditions of the Elders, however we have learned that they are a powerful and positive influence on those offenders who wish to learn their culture and apply its teachings in their everyday life.

It has been said in the past, and, unfortunately, remains true to some extent today, that the first exposure many offenders have to their culture and traditions is in Saskatchewan Penitentiary through the cultural and spiritual programs that are in place. For those offenders who choose to participate, the teachings of the Elders present opportunities for change.

Elders tell us that they fulfill many roles. We know that Elders have different talents and teachings, and that they work in different ways according to their individual protocols and traditions. One Elder described her role in this fashion (these are not her exact words but are paraphrased):

> 'Kookum' is the word most appropriate to this situation. Kookum acts as a psychologist, teacher, chaplain and ceremonialist. The women face an identity crisis and need to accept who they are as women. This takes a lot of work. There is also a need for intensive work with women who are FASD.

CSC has learned that Elders play a variety of roles in an Institution. The traditional teachings show offenders how to live a good life without resorting to criminal behaviour; the trust Elders are able to establish with offenders is critical to their ability to help offenders deal with their past; ceremonies provide a safe environment to deal with the issues that have been suppressed over many years; and Elders bring to our Institutions the principles of restorative justice to address conflict situations.

With the support and encouragement of Elders we have found that offenders are able to participate more effectively in the mainstream correctional programs and derive greater benefit. One study by the Native Clan Organization[7] in Winnipeg found that Aboriginal offenders completing sex offender treatment programming achieved similar successes in remaining crime free as non-Aboriginal participants. The non-completion rate of Aboriginal offenders, however, was substantially higher than the non-Aboriginal participants so the program, overall, was not benefiting this group as well as it should. By introducing a spiritual component to the program, Native Clan found that completion rates for Aboriginal participants increased, and that the outcomes for those completing remained consistent with the non-Aboriginal population.

Saskatchewan Penitentiary has established an approach that encourages offenders to develop a healing plan with the Elders. The Elders direct the activities of the offender through his healing plan and provide support and intervention throughout. This complements the offender's participation in other programs in the Institution.

[7] Ellerby and MacPherson, 2002

ELDER'S HEALING PLAN PROGRAM

Elder Assessment process
Healing Plan
Pipe Ceremony
Sweat Lodge Ceremony
Sacred Circle
Escorted Temporary Absence Program
One On One Counseling
Who Spa Gan teachings
Alternatives to Segregation
Traditional Skills
Community Reintegration Program (Broken Wing)
Specialized Workshops

Addressing Criminogenic Need Areas

The offender's personal history is researched, and the Elders make determinations on the root causes of the identified need areas.

Elder Assessment

Based on these determinations the Elder will evaluate these root causes and develops a healing plan using traditional methods. This plan may or may not include escorted temporary absences for ceremonies in the community.

Elder Healing Plans Objectives

The basic initial objective of the Elder Healing Plan is to gain the offender's confidence and trust so that the offender becomes more receptive to the advice and guidance of the Elder.

Once this objective has been achieved the next objective is for the offender to make personal effort and commitment to the Elder to start his healing plan. The offender will be expected to demonstrate this commitment to the Elder by his actions and participation in the initial phases of his healing plan.

Success can be demonstrated by compliance with the correctional plan, and positive behaviour in the institution. Elements of the plan can include one on one counseling sessions as well as active participation in the institutional ceremonies.

Escorted Temporary Absences (ETA's)

Each ceremony on the ETA program of the Healing Plan has a very specific goal in addressing the offender's criminogenic needs. For example if successful the fasting ceremony should break down the offender's barriers of denial. As a result of this awareness he may demonstrate a deterioration in his mood and/or behaviours. The offender may experience bouts of depression and/or irritability. Should the offender be experiencing these symptoms it becomes imperative that he receive immediate treatment for them in the form of healing sweats. During these healing sweats the Elder assist the offender to accept responsibility for his actions and to make a commitment to improve his life style.

Selection Criteria

Offenders selected must have demonstrated a sincere commitment and desire to the Elders to make the necessary sacrifices to achieve their healing strategy.

Case Conferences and Elder Comments

As part of the correctional process, comments from the Elders on participation in the plan and change on the part of the offender are presented at case conferences discussing the offender's overall progress.

ABORIGINAL HEALING UNITS

CSC is committed to establishing a correctional service responsive to the culture and traditions of Aboriginal offenders. Aboriginal Healing Units are an important initiative toward meeting that objective. CSC has established three pilot projects where ranges or units have been set aside to provide an environment of healing within the prison context. The units have been established at LaMacaza Institution in Quebec, Stony Mountain Institution in Manitoba, and Saskatchewan Penitentiary in Prince Albert.

The overall goal of the Healing Units in the Prairie Region has been established as follows:

> To establish an environment within the Prairie Region where Aboriginal offenders may access services in a culturally appropriate manner through a continuum of aboriginal specific operations and programs from intake assessment to release to the community up to warrant expiry.

The specific objectives are:

- To facilitate healing
- To re-connect with aboriginal culture and history (self-identity has value)
- To create a safe environment of trust where people have an opportunity to change, to make better decisions, choose key, pro-social values.
- To establish a different culture within an institution which complements and links to existing institutional programs and work opportunities
- To promote a continuum of healing beyond the bounds of the unit. This can include the host institution itself, lower levels of security and the community.

The anticipated outcomes for evaluation purposes are as follows:

1. Engage in less illicit drug and alcohol activity while on the range.
2. Participate in fewer acts of violence.
3. Exhibit a higher degree of pro-social behaviour while on the unit.
4. Demonstrate higher levels of program participation.
5. Demonstrate greater success in employment programming.
6. Achieve higher rates of transfer to lower levels of security.
7. An improvement in readiness for conditional release.
8. Demonstrate a higher degree of satisfaction with the programs and services offered.

The Healing Unit provides opportunities for offenders to participate in programs and activities in a supportive environment where decision making, dispute resolution, and discipline is carried out through inclusive and restorative means. Inmates participate in the process under the supervision of an Elder using the Circle as a primary means of addressing issues. Although many activities are unit based, inmates participate in programs and activities in the main Institution. Programs specifically developed for Aboriginal offenders supplement unit activities but inmates also participate in the main CSC core programs as well.

The units have been in operation for just over one year now, and we have found that the restorative approaches applied on the units can be made to work within the rules and regulations of an institutional environment. Preliminary results suggest the units are achieving their objectives, and that inmates are demonstrating positive change.

The Healing Units will be subject to evaluation in the 04/05 fiscal year and based on the results of this evaluation we anticipate being able to promote expansion of the concept in other CSC institutions.

ABORIGINAL HEALING LODGES

Over the past 6 years, CSC has introduced a new concept in federal corrections for Aboriginal offenders. Healing Lodges offer services and programs that reflect Aboriginal culture in a space that incorporates Aboriginal people's tradition and beliefs. In the Healing Lodge, the needs of Aboriginal offenders serving federal sentences are addressed through Aboriginal teachings and ceremonies, contact with Elders and children, and interaction with nature. A holistic philosophy governs the approach, whereby individualized programming is delivered within a context of community interaction, with a focus on preparing for release. In the healing lodges, an emphasis is placed on spiritual leadership and on the value of the life experience of staff members, who act as role models.

In the Prairie Region three CSC institutions are designated as Healing Lodges. Okimaw Ohci Healing Lodge located on the Nekaneet Reserve opened its doors to women offenders in 1996, and Pe Sakastew, located on land owned by the Samson First Nation began operations in 1997. The Willow Cree Healing Lodge, created in collaboration with the Beardy's Okanese First Nation will begin accepting offenders in the fall of 2003. Details on the operating principles of Okimaw Ohci and Willow Cree are appended to this document.

Under the provisions of Section 81 of the Corrections and Conditional Release Act CSC has entered into agreements with Aboriginal communities to transfer offenders to Healing Lodges operated by the community or agency. Stan Daniels Healing Centre in Edmonton is operated by Native Counselling Services of Alberta; the Ochichakkosipi Healing Lodge is managed under an agreement with the Ochichakkosipi First Nation in Manitoba; and CSC accesses 5 beds at the Prince Albert Grand Council Spiritual Healing Lodge. The PAGC Spiritual Healing Lodge provides services for 20 Provincial and 5 Federal offenders.

ABORIGINAL GANGS

Just over 10 years ago, Aboriginal gangs were insignificant in size among the federal inmate population in the Prairie Region. Today, there are approximately 300 Aboriginal men in Prairie institutions who belong to a gang. This group accounts for just less than 25% of the total incarcerated Aboriginal population but it exerts a very powerful influence over the remaining offender population. A considerable amount of time, energy, and resources is expended to manage these individuals and to protect those affected by them.

In this respect, life in our institutions is a microcosm of the issues facing our communities - a rapid growth of young men and women forming associations as gangs. As in the community, the phenomenon of gang membership has moved from east to west and is a factor in all of our federal institutions in the Prairie Region.

Historically, our efforts to manage this population have been focused on information gathering/sharing and the suppression of blatant gang affiliated activity. CSC's approach today involves a paradigm shift, which involves an increased focus on risk reduction. This integrated or balanced approach has, as an overall goal, the reduction of "violent" behaviours (physical and verbal intimidation, muscling, drug trafficking, and enforcement) associated with gangs and focuses less on suppression of gang membership or disaffiliation.

In the spring of 2000, Mr. Ovide Mercredi[8] prepared a report for CSC on Aboriginal Gangs that challenged the status quo perception of Aboriginal "gangs." The Mercredi Report suggested that the practice of "labelling" an Aboriginal man as a "gang" member should be limited or avoided altogether. Mercredi described a number of historical, political and socio-economic elements and characteristics unique to incarcerated Aboriginal people.

We have listened to Mr. Mercredi's counsel and are taking steps to change the way we approach the problems associated with gang activities in our institutions. This does not mean that we endorse violent or illegal

[8] Mercredi, October 2000

activities. In order to maintain safety and security in an institutional environment for staff and inmates alike, there is no tolerance for violent behaviour. Sanctions are imposed on individuals who violate rules or who behave violently, whether they are gang members or not. We have found that it is not possible to entirely avoid labelling gang membership, as the gangs themselves promote their gang affiliations, however, we target individual behaviour, not gang behaviour, as a focus of change.

Work done with members of Aboriginal gangs is difficult; it involves first of all establishing a level of trust and mutual respect. We have found that Elders and traditional people are best able to develop a trusting relationship and interventions by Elders have been an important aspect of our efforts to encourage these men to consider and apply alternatives to violence in their efforts to achieve their goals. Work within the context of traditional and spiritual values is complemented by programs designed to address the factors contributing to criminal behaviour. As our complement of Aboriginal core programs grows, we are increasingly able to offer the type of programming, delivered by an appropriate program facilitator, that Aboriginal offenders find to have meaning from their worldview perspective, regardless of whether they are gang members or not.

This approach, however, is intense and overwhelming due to the scope of work involved and the numbers of offenders affected. We must reach out for other approaches that more directly target the needs of gang members. In November 2001, CSC launched the Aboriginal Gang Initiative as a pilot program in Winnipeg. The initiative was developed as a response to the rapid growth of young Aboriginal men turning to gangs and as our effort to specifically target the needs of these men as they move through the correctional system and inevitably reintegrate to the community.

The specific mandate of the initiative, now known as **Bimosewin**, (Taking Responsibility for Your Path in Life) is : "*To disengage Aboriginal gang members from criminal activities and to assist in their successful reintegration into the community.*" An important element of the Bimosewin program is the partnerships we forge with the Aboriginal community in Winnipeg and Manitoba.

The specific objectives are as follows:

- Assist clients in their spiritual walk in life i.e., "Red Road", wellness, stability, etc.
- Provide practical guidance and support away from criminal activity
- Provide Aboriginal teachings and cultural activities as taught by respected Elders
- Develop a positive outlook in life
- Change attitudes and beliefs away from crime and violence
- Seek and provide opportunities for personal change, training, education, and employment

The program will undergo evaluation in the 2004/05 fiscal year. We anticipate change in the following variables:

- Successful reintegration of former gang members into the community;
- Decrease in violent incidents and control exerted by gang members in Correctional facilities;
- Increased requests for and greater participation in programs;
- Greater movement of Aboriginal gang members to lower security levels and into the community;
- Greater chances for parole for Aboriginal gang members;
- Greater community links and supports for Aboriginal gang members.

Bimosewin has been operating now for over 18 months with the following preliminary results and signs of positive movement:

- 125 + Aboriginal Gang members and Ex-gang members have given their written commitment to work with Bimosewin (in the beginning - Sept 2001 - no gang members trusted us)
- 12+ Aboriginal individuals "helped out or kept out" of the gang
- Meaningful employment secured for more than 15 Aboriginal gang members
- A Safe Home has been supported and is now available for ex-gang members
- A Core Group of Ex-gang members is starting to emerge that we can mentor and work with
- Good credibility established with Aboriginal gang members in Stony Mountain Institution
- Gang members have greater exposure to Aboriginal role models

The results of this evaluation will provide us with the data to seek additional resources to expand this program into Saskatchewan and Alberta.

ABORIGINAL CORE PROGRAMS

A critical piece to CSC's strategy for safe reintegration is the development of a series of core programs that reflect the tradition and culture of the Aboriginal offenders that will address factors contributing to the offending behaviour. In consultation with partners in the Aboriginal community, we have embarked on this initiative.

Factors that significantly affect Aboriginal offenders include violence and aggression, family violence, and substance abuse. Based on our experience with the delivery of a substance abuse program developed by the Society of Aboriginal Addictions and Recovery, program facilitators in the Prairie Region are developing a new curriculum for an Aboriginal Substance Abuse program that will be implemented this fiscal year.

Through a long standing partnership with Native Counselling Services of Alberta, CSC has acquired the rights to deliver a program they have developed for Aboriginal offenders targeting violent behaviour. This program, In Search of Your Warrior is an intensive program delivered by Aboriginal program facilitators that assists offenders to begin to understand how violence is passed from generation to generation and teach them the skills they will need to reduce and ultimately eliminate their own violent behaviour. This program is now delivered in Saskatchewan Penitentiary as well as other federal institutions in the Prairie Region. A similar program based on the Warrior curriculum has been developed for women, and is being delivered at Okimaw Ohci Healing Lodge. The impact of this program on offenders has been positive and we will be conducting an evaluation of the program in 2003/04.

Development is nearing completion for a family violence program. This program will apply traditional values and beliefs to change the behaviours and attitudes of Aboriginal men who engage in violence in the home. Also in the final development stages is a Healing program for Aboriginal men. The Healing program employs both traditional and contemporary processes to motivate participants to begin and maintain a healing quest. The program is developed to address the factors that contribute to criminal behaviour.

Research is underway for the development of sex offender treatment programming that will address the factors contributing to sex offending behaviour. Currently, at both Saskatchewan Penitentiary and at the Regional Psychiatric Centre, Elders play a key role in providing spiritual support and teachings to offenders who participate in the programming in those facilities.

HOLISTIC HEALING MODEL
FOR SEX OFFENDERS
Correctional Service of Canada, Prairie Region

In recognition of the need to provide culturally appropriate programming for Aboriginal offenders, a working group was established to develop a program model that meets their cultural, social and spiritual needs. The working group brought together Elders, Healers, Psychologists and Program officers to determine what this model might look like.

The premise of bringing together experts in their fields recognized that there are experts on issues related to sex offending behaviour, as well as on spiritual healing and wellness among Aboriginal people. Sharing this expertise, exploring common ground, and seeking out ways in which the two bodies of expertise complement one another facilitated the development of a model that can be quickly and readily established in correctional facilities.

Spiritual healing is a cornerstone of this model. The model does not purport to suggest exactly how Elders, Healers, or Elder Apprentices will provide this healing. The expertise resides now within the Elders who have spent their entire lives learning. Since dealing with sex offenders is a relatively new requirement for Elders, it is expected that they will wish to learn more about the unique characteristics of this group of offenders. Establishing programs throughout the Prairie Region where Elders work in close partnership with contemporary treatment therapists will greatly facilitate the learning process. This will create opportunities for the exchange of information and ideas amongst Elders, and between Elders and Psychologists (or treatment therapists.)

Applying the elements of the model and working together with contemporary treatment staff form the basis for an action research project. This will provide us with baseline data to assist in further development of a long term program design for Aboriginal sex offenders.

The model described in this document recognizes three important principles:

1. *Elders, Healers and Elder Apprentices provide programs and services to offenders that are valid interventions responding to the criminogenic needs of aboriginal offenders.*

Elders are the carriers of a culture that promotes positive values and a positive lifestyle. They are highly respected and influential within their communities, and, because of this status, have a profound influence on the behaviour and attitude of many aboriginal offenders. In basic and fundamental terms Elders:

- teach ways of living in balance and harmony within the Aboriginal world view.
- pass on knowledge that is important for the survival of Aboriginal peoples in a spiritual and cultural sense.
- inculcate the sense of responsibility and accountability in offenders that 'The Way' encourages.

It is important to understand that the teachings of the Elders have an impact on criminal behaviour. These teachings promote a lifestyle that is crime free, and are entirely consistent with CSC programming objectives. The teachings, through ceremonies and counselling, contribute significantly to a supportive environment in which Aboriginal offenders are better able to deal with those factors contributing to their criminal behaviour.

2. *The Elder and the Psychologist are equal partners in efforts to prevent sex offending on the part of the aboriginal offender.*

Contemporary interventions are designed to teach people how to predict their future behaviour so that they can prevent the recurrence of inappropriate behaviour. The success of these interventions depends in large part on the desire of the offender to prevent these behaviours. Elders have told us that healing must begin before these interventions can be effective. By showing how to live in balance and harmony, Elders establish a frame of mind and a motivation for offenders to make the changes lives required to lead a law-abiding life style.

3. *Elimination of inappropriate sexual behaviour is the goal: this is achieved holistically by addressing underlying factors that contribute to the behaviour.*

Aboriginal healing does not recognize the separation between the spiritual and the physical world. In the traditional view, body, mind and spirit are inseparable. Spirituality is the core concept of healing and wellness. The holistic viewpoint recognizes that there are many factors which impact on how people behave, and these must all be addressed. This is consistent with the contemporary model for treating sex offenders, which also recognizes that, for each individual, there are usually causative factors which must be addressed before the behaviour can be corrected.

Extract from a CSC working document, 1995

ABORIGINAL STAFFING AND RECRUITMENT INITIATIVES

For the past four years the Prairie Region has had a dedicated regional recruitment team whose mandate included Employment Equity recruitment with particular emphasis on Aboriginal recruitment and retention initiatives due to the large Aboriginal community representation and the abnormally high Aboriginal offender population in this region. The offender population is over 40% Aboriginal in this region and Aboriginal correctional staff are needed as positive role models. CSC approved a national Aboriginal Recruitment Strategy in 2000 with the Prairie Region taking a leading role. Today, 14.2% of all CSC Prairie staff are of Aboriginal ancestry including 18.7% of Correctional Officers and 16.2% of Parole and Program Officers. The challenge will be to continue this growth, to retain these staff and to promote succession planning.

Aboriginal recruitment initiatives have targeted an increase in the number of qualified applicants seeking a career with CSC, identifying and removing barriers to recruiting these applicants, increasing the number of qualified Aboriginal staff, and retention. Some of the key activities and initiatives in achieving these goals have included:

- Targeted outreach to Aboriginal communities, organizations and learning institutions;
- Changing negative stereotypes to attract applicants with CSC values;
- Creating recruitment inventories based on Employment Equity groups;
- Including Aboriginal members on all assessment teams and staffing boards;
- Establishing *partnerships* with Aboriginal organizations to achieve recruitment goals;
- Conducting Aboriginal specific competitions for Parole and Program Officers;
- Recruiting three new staff to an Aboriginal Management Development program; and
- Conducting initiatives to reinforce CSC Values in the workplace.

A partnership that has been particularly successful has been the Correctional Officer Pre-Recruitment Training Program. It was observed that only 10% of Aboriginal applicants who met the screening requirements were successful in the CSC recruitment assessments. The recruitment team developed a curriculum based on the skills and knowledge needed to succeed in the recruitment process and included a supervised work experience at a Correctional Institution. Partnerships were established with Aboriginal organizations to deliver this program through their training and development funds and with the assistance of the Recruitment Officer and testing was conducted during or shortly after the training was completed.

The training developed applicant skill levels, increased their confidence and understanding of the CSC environment and the results of applicants taking this training increased to a 70% success rate. This course is being delivered in various formats in each of the three Prairie provinces with First Nations, Metis and Aboriginal training centre organizations who have agreed to partner with the CSC in recruitment.

Recruitment initiatives and partnerships have been successful in recruiting qualified Aboriginal staff. This is particularly evident by the increase in Aboriginal Correctional Officer staffing from 13% in the first year to over 30% during the past two years and the strong working relations that have developed with Aboriginal partners.

SECTION 4 - COMMUNITY BASED ACTIVITIES / LOOKING TO THE FUTURE

Previous discussion has provided background on initiatives within CSC - many of them institutionally focused. In addition to providing culturally relevant assessment and intervention strategies for Aboriginal offenders in institutions, CSC's strategy also addresses the need for culturally appropriate post-release mechanisms and services to assist in the successful reintegration of Aboriginal offenders. The discussion in this section will emphasize the work done through the efforts of the District Parole office in Saskatchewan to improve the delivery of services to Aboriginal offenders who are on conditional release.

CSC has worked hard to improve the level of service delivery for Aboriginal offenders in our institutions. Our overall reintegration strategy, along with enhancements made in the provision of culturally relevant services provides inmates with the tools they need to succeed on release. We work continually to improve the level of service in all areas, however we take pride in the success of our accomplishments. The transition of offenders to the community, however, places a heavy reliance on our ability to access programs and services in the community.

As much as behaviour change can be initiated in institutions, the significant challenge is when the offender returns to the community. What works for the offenders will only succeed if the community has the capacity to provide the necessary support services. We wish to emphasize our strong belief that a significant challenge facing us all (CSC, all levels of government, First Nation, Metis and private agencies alike) is how we can better coordinate our activities to make the best use of the resources that presently exist. In smaller communities and reserves throughout the Province the added challenge is the development of community infrastructure to allow communities to meet these challenges.

CSC is aware that many Aboriginal communities have a desire to become involved in corrections initiatives. Much work is currently done by volunteers. We appreciate however, that communities, particularly, but not exclusively, smaller rural communities and reserves have large demands on limited financial and human resources.

Being the District with the highest proportion of Aboriginal offenders in the Region, the Saskatchewan District has placed much emphasis on the development of Aboriginal post-release initiatives. The Saskatchewan District's post-release initiatives have three basic thrusts:

1. **Optimizing our ability** to develop release plans and supervision strategies that respond appropriately to the needs of our Aboriginal offender population.
2. **Working with Aboriginal communities** to help them learn more about the CSC and how we operate and to encourage and support Aboriginal communities to play a greater role in the correctional process through participation in release planning and supervision of Aboriginal offenders.
3. **Developing specific projects and partnerships** with Aboriginal communities and Government agencies directed towards successful reintegration of Aboriginal offenders.

1. OPTIMIZING OUR ABILITY

One of the most critical responsibilities of the Saskatchewan Parole District is to provide offenders with the support, supervision and control necessary to successfully reintegrate back to the community as law abiding citizens. The CSC recognizes that the way in which this is accomplished with Aboriginal offenders must be culturally relevant to that population in order to succeed. It also requires that we engage the Aboriginal community in a meaningful way.

Some of the ways we have pursued this goal include:

- Establishing the District Aboriginal Community Development Officer and Community Liaison Officer positions.
- Increasing the proportion of District staff of Aboriginal ancestry.
- Developing a procedure for preparing and tracking cases for release planning under the provisions of Section 84.
- Delivering awareness sessions to institutional and community Parole Officers and Parole Board members.
- Providing CSC staff with awareness sessions delivered by Aboriginal community resources like the Prince Albert Grand Council Aboriginal Healing Project.
- Exploring innovative supervision and support services for Aboriginal Offenders in remote rural areas of Saskatchewan.

For the last two years CSC staff from the Prince Albert Parole Office have organized Reintegration Fairs at Saskatchewan Penitentiary and Riverbend Institution. These bring together representatives from the province's three Area Parole Offices, the Oskana Community Correctional Centre as well as representatives from many of the community based agencies and services who work with offenders on conditional release in Saskatchewan. The fairs are presented to the staff and inmates at these two institutions to inform them of programs and services available in the community that could be considered as part of their release planning. Programs and services specific to Aboriginal offenders are included. The Aboriginal Community Development and Community Liaison Officers are present to inform offenders and staff about Section 81 and 84 possibilities.

ABORIGINAL COMMUNITY DEVELOPMENT OFFICER INITIATIVES

The overall objective of the Aboriginal CDO initiative is to promote safe reintegration of Aboriginal offenders by enhancing residential and program opportunities for offenders in Aboriginal communities. This will be done by the following:

1. Increase awareness of S. 84 within CSC.
2. Encourage more Aboriginal communities to take responsibility for the care of Aboriginal offenders.

Result:

An increase in safe and early releases to Aboriginal urban and rural communities.

An increase in the number of urban resources for the offenders

These activities benefit CSC staff, offenders and communities.

Anticipated benefits to staff include a greater awareness, understanding and appreciation of:

- traditional ideas of work and family relationships
- the effects of residential schools
- the challenges facing Aboriginal offenders on their healing paths
- community based support services available to Aboriginal offenders

Anticipated benefits to Aboriginal offenders include:

- Aboriginal offenders are able to serve some or all of their sentences in their First Nation community.
- Aboriginal offenders can be granted day parole to their First Nation community rather than to an urban CCC/CRF.
- Aboriginal offenders are supervised with more consideration for the realities of their traditional lifestyles.

Anticipated benefits for the community include:

- Community involvement in the process enhances successful outcomes through increased safety in communities.
- Important family and community relationships are supported and preserved.

The specific geography and demography of Saskatchewan give rise to significant challenges. The Saskatchewan District is divided into three large parole areas according to the three major urban centres of Prince Albert, Saskatoon and Regina. The largest of which is the Prince Albert area that covers about half the province. Not only are these huge areas but the Aboriginal peoples and communities are diverse.

The Prince Albert Parole Area is the largest of the Districts three areas. This area includes the largest number of First Nation communities. Prince Albert is home to two federal prisons, two provincial correctional centres and two Healing Lodges; one operated by CSC the other is a Section 81 facility. For these reasons the District's Aboriginal Community Development and Community Liaison Officers are both stationed in Prince Albert. While their work extends to the other two parole areas it is understandable that the benefits of their work are felt mostly in the Prince Albert Parole Area.

2. WORKING WITH ABORIGINAL COMMUNITIES

The CSC recognizes that values and traditions found within many Aboriginal communities are key elements for the successful reintegration of Aboriginal offenders. Aboriginal peoples are finding correctional methods in communities that are very different from mainstream corrections. These approaches incorporate concepts such as healing, reconciliation, spirituality, respect, accountability, balance and restoration.

A major component of the Saskatchewan District's strategy is to help Aboriginal communities in Saskatchewan learn about the CSC and identify the resources they have already or need to develop in order to build their capacity to accept and support their members returning on conditional release.

Some of the activities that help us accomplish this are:

- Establishing and maintaining links with First Nation Justice Committees.
- Delivering awareness sessions to Aboriginal communities about the CSC and how we operate.
- Inviting Aboriginal communities to participate in the release planning for offenders from their communities.
- Providing assistance to Aboriginal Communities under the Aboriginal Community Reintegration Program to defray costs involved in release planning for federal Aboriginal offenders. Limited funding exists under this program to cover costs such as travel for representatives of an Aboriginal community to attend institutions to re-connect with incarcerated community members and participate in their release planning with the offender and the CSC case management team.
- Providing technical assistance to communities in the development of release plans for offenders under the provision of Section 84 of the Corrections and Conditional Release Act.
- Participate in the Northern Justice Symposium presenting information to Northern Metis Community Representatives.

In March of 2002 CSC partnered with the Prince Albert Grand Council and the Prince Albert Correctional Centre to present a facilitated workshop to Community Justice Representatives from various Aboriginal communities. The focus to provide awareness of the work being done by each of these three agencies toward justice issues.

Benefits of these activities include a wider involvement on the part of Aboriginal communities in the release planning for their incarcerated residents, leading to more timely releases and successful outcomes.

While the CSC has significant expertise in corrections and reintegration of offenders we acknowledge that the expertise in working effectively with Aboriginal people lies within Aboriginal communities. The challenge is to balance the CSC's mandate and accountability with an increasing ownership of Aboriginal corrections issues by Aboriginal communities.

With well over one hundred First Nations and Metis communities in Saskatchewan, it is a significant challenge to establish and maintain meaningful links with these communities.

CSC continues to explore ways to better connect with Metis communities in order to develop the kinds of relationships we are pursuing with First Nation communities.

3.DEVELOPING SPECIFIC PROJECTS AND PARTNERSHIPS

Aboriginal communities have now started to come forth with initiatives to assume the care and custody of their peoples and offer services that are more consistent with community-based, culturally-specific methods of healing and balance. Aboriginal communities are indicating that they can do a better job at healing Aboriginal offenders than the corrections system will. The CSC recognizes the benefit of creating partnerships with Aboriginal communities and agencies in developing programs and services directed toward the reintegration of Aboriginal offenders.

Furthermore we recognize the need to develop partnerships and bridges with other federal and provincial government departments. In particular there have been numerous instances of effective exchanges and collaborations with Saskatchewan Provincial Corrections. More can and must be done to work in concert with each other to address Aboriginal issues in corrections.

To this end the Saskatchewan Parole District is developing concrete agreements, contracts and partnerships with

Aboriginal communities and agencies as well as other government agencies around specific projects directed toward the reintegration of Aboriginal offenders.

Some examples of this include:

- Developing private home placements to accommodate offenders released to First Nation communities
- Developing a Section 81 Agreement with Gordon's First Nation
- Establishing a contract with Piapot First Nation to provide cultural and spiritual services to conditionally released offenders in Regina
- Facilitating contacts with community Elders to provide services to offenders
- Use and development of Aboriginal community based residential treatment facilities
- Facilitating referrals to the Prince Albert Grand Council Aboriginal Healing Project for Aboriginal offenders being released to Prince Albert
- Participating in the Regina Demonstration Project
- Participating in the Regina Inner City Project
- Seconding a CSC staff member to the Prince Albert Grand Council (1999/2000)
- Discussing with Piapot First Nation opportunities for the establishment of a CRF/Healing Lodge for Women and with the Ochapowace First Nation for a CRF for men (Late 1990's). and more recent discussions with Piapot First Nation regarding a Section 81 Agreement.
- Developing an Aboriginal Post Release Initiative with the Yorkton Tribal Council (Late 1990's)
- Participating on the Steering Committee for Metis Family and Community Justice Services (MFCJS). MFCJS is conducting a research project to assess the needs of Metis Offenders inside the institution and their possible reintegration into their communities. The outcome would include how Section 84 can be facilitated in those communities.
- Funding support for release planning development for offenders from Onion Lake, Mistawasis, English River, Canoe Lake, and Cote.

In 1998 CSC was approached by two individuals with previous experience in managing Community Residential Facilities (CRF's) for Aboriginal offenders to open a CRF in Saskatoon. We recognized the need for such a facility and agreed to provide assistance to the contractor in getting established. At the time, a concern we had was that, under the law governing conditional release, there was no guarantee that there would be sufficient clientele to permit the contractor to cover expenses. We encouraged them to explore other sources of clients and income.

CSC made an initial contribution to assist in the development and start up of the facility and the contractor took the necessary steps to obtain approvals to establish the facility. Unique amongst our experience in opening up CRF's for offenders, this project actually obtained an endorsement from many of the neighbours and from City Council.

Anticipated benefits of these activities to Aboriginal offenders includes:

- Increased opportunities to reintegrate into their home communities when their home communities are not urban communities.
- Increased accessibility to their traditional lifestyle.
- Increased access to cultural and spiritual activities.

- Starting to identify and fill service gaps for Metis and Aboriginal female offenders.

Anticipated benefits to the community include:

- Communities become active partners working toward the reintegration of their own members.
- Experience and expertise developed to support offenders is transferable to work with other community members.
- Individuals who receive certain CSC training can put that training to work in their own communities. (an example of this is facilitator training for the In Search of Your Warrior program)

Three years ago, CSC contracted for the delivery of facilitator training in the In Search of Your Warrior program. This was done in a four way partnership. CSC contracted for the delivery of the training with Native Counselling Services of Alberta who developed the program. Through an arrangement with the Aboriginal Corrections Branch of the Solicitor General of Canada, the Federation of Saskatchewan Indian Nations acquired 5 seats at this training. The end result of the training was that CSC has program facilitators qualified to deliver In Search of Your Warrior to offenders, and Saskatchewan has benefited through the development of expertise in the community. As offenders are released to the community there is an increased opportunity for CSC to access these skilled resources to provide support services for these offenders. Discussions are now underway for the modification of the program to be more appropriate to the needs of the community. The long term benefits of this arrangement are skilled resources are available to provide prevention services in their community. Prevention, in the form of aftercare and maintenance to conditionally released Aboriginal offenders (Federal **and** Provincial) can also be achieved when these offenders access these services.

BROKEN WING PROGRAM

This is a program where Aboriginal offenders in Saskatchewan Penitentiary are given the opportunity to reintroduce themselves, apologize to their communities, and give something positive back. This program is available to offenders who are eligible for escorted temporary absences, who are following their correctional plan, working with the Elders and are making positive choices. The offenders are given the opportunity to address students, teachers and communities about their life story and what has occurred since that time and how they have managed to make positive changes. The offenders give their version of life in an institution and the negative side of gang affiliation, penitentiary life and the struggles he is faced with daily. Since the offenders who go on this program are active in the cultural centre, they give the positive aspect of working with the Elders.

The second portion involves the Correctional Officer giving his version of life in the institution and the laws that he is required to uphold and his interactions with offenders. The Correctional Officer also provides an overview of the negative side of prison life from strip searches to altercations and other areas in which they are involved.

The last portion involves participation from the audience with a question and answer period.

The development of these initiatives is time consuming. Saskatchewan is a large province and its peoples are diverse. Communities are spread out and the needs vary depending on a host of factors. It takes someone familiar with the local needs to develop effective projects. These are challenges for the Saskatchewan Parole District.

Changing Expectations

CSC's mandate and resourcing limits its interventions to those offenders serving sentences of two years and more. Forward thinking in corrections now reflects what the Aboriginal communities have been telling us for many years: we must adopt a more holistic view to truly effect change:

- CSC is now involved in restorative approaches to justice, and the role of victims and their rights are becoming much more integrated into our day to day business.
- We are applying traditional healing practices in our institutions and we know that healing one part of the unit is not effective unless the other parts also follow a healing journey. Our inmates who benefit from interventions in institutions may return to their family to find that they have not had the same opportunity;
- Characteristics of offenders exhibiting symptoms of FASD are not remarkably different from those of non-offenders with these symptoms, particularly when those offenders are on conditional release. Common needs present opportunities for agencies to work collaboratively to maximize the use of the resources we have.

CSC and all Federal Government Departments are being challenged to seek ways to better integrate services and resources to better meet the needs of Canadians. CSC is involved in various activities that involve inter-departmental collaboration however we recognize that a paradigm shift in our thinking and that of other government departments and other governments is going to be necessary for us to gain the greatest benefit from what is available to us.

GOVERNMENT OF CANADA CONTRIBUTES $129,557 TO ABORIGINAL FAMILY REINTEGRATION PROJECT

The Government of Canada has awarded $129,557 to fund a project in Prince Albert, Saskatchewan. This project will work with children and families of Aboriginal offenders to help stop the cycle of offending from being passed from generation to generation.

The federal Department of the Solicitor General is contributing $129,557 to the Prince Albert Grand Council for the Family Reintegration Project, an initiative that will work with offenders and their families to develop a supportive community environment. The project will offer Aboriginal offenders and families counselling services, workshops and training sessions, as well as community-based conflict resolution and mediation. In addition, the project will coordinate the delivery of community resources and make referrals to professional services, as required.

A full-time family reintegration worker will work with existing programs and services operated by the Prince Albert Grand Council, to ensure an integrated approach.

The Prince Albert Grand Council Justice Program has been operating for approximately seven years and oversees the operation of the Spiritual Healing Lodge, Justice Workers, Community Justice Committees, the Urban Alternative Measures Program and the Aboriginal Courtworker program.

ON THE HORIZON

While there are still significant challenges facing us; Saskatchewan is an exciting place to be in terms of the development of innovative initiatives regarding corrections. There is a long history in Saskatchewan of collaboration between provincial and federal corrections. Saskatchewan's Aboriginal communities are at various stages in identifying and solving their own social and economic problems. Municipal, provincial and federal governments are taking steps toward acting in concert to solve significant problems.

Given this climate there are opportunities that the Saskatchewan Parole District would like to pursue:

- The Honorable Ralph Goodale, Federal Interlocutor for Aboriginal Peoples, has initiated three Demonstration Projects in Canada to explore the ability of federal government departments to work in concert to address some local issue. One of these projects is in Regina where all federal government departments are taking on the challenge of improving the results of education in the inner city. Recognizing that crime and community safety is one of the factors affecting this issue the CSC is participating in this initiative. The successful development of these horizontal working relationships between federal government departments opens the door to exciting possibilities for the CSC to partner with other government agencies like HRDC and the National Crime Prevention Centre to target and address Aboriginal community needs that coincide with CSC initiatives and identified priorities such as Fetal Alcohol Spectrum Disorder (FASD), parenting skills, effects of residential schools, and lack of services in First Nation communities.

- A spin off of the Regina Demonstration Project is the Regina Inner City Project where municipal, provincial and federal departments in conjunction with an inner city Regina neighbourhood will develop a comprehensive plan to address the social and economic problems in that neighbourhood. CSC is participating in this initiative as an active partner in keeping our communities safe.

- Provincial Corrections faces many of the same challenges in working with Aboriginal offenders as the CSC. Our two agencies have a very good working relationship, but we must work even more closely toward enhancing a working relationship that draws on each other's strengths and avoids duplication.

- The Saskatchewan District is working on a project to build a new facility for the Oskana Community Correctional Centre in Regina. The new facility will incorporate all the lessons learned through 30 years of experience delivering residential service to offenders on conditional release. It is being planned with a Cultural Room and appropriate ventilation to allow smudging. Its versatile layout will allow for the delivery of specialized services and programming for offenders suffering from conditions like FASD.

- Current work being done regarding FASD is suggesting that a significant proportion of offenders, particularly Aboriginal offenders, suffer from this condition. The Saskatchewan Parole District would like to pursue the provision of specialized services and programming for offenders identified as suffering from FASD throughout the province. The potential need not stop here, however, as our clients share similar needs as clients of other social service agencies who are FASD as well. There is good potential in this high need area to create synergy by drawing on the skills, knowledge and resources of many organizations.

- Recognizing that many Aboriginal offenders were not living in a First Nation community before entering prison and intend to return to an urban community upon release the District Aboriginal Community Development Officer will focus on the development of services in urban centres during 2003/04.

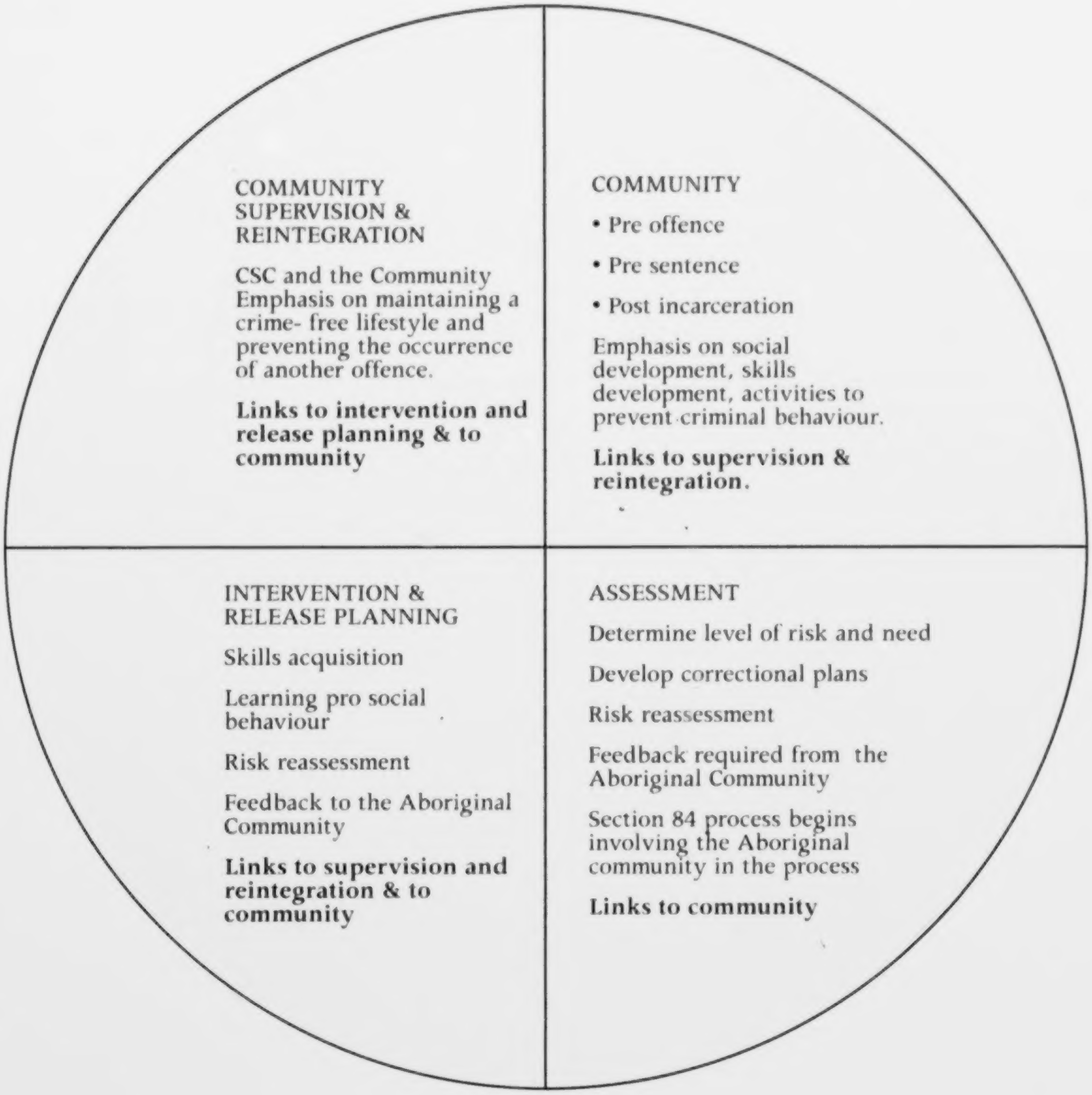
- The Saskatchewan Parole District wishes to expand the work being done on First Nation communities to include Metis communities and support communities for women offenders.

In conclusion Corrections today is not and cannot be isolated from the community in which it operates. We will continue to promote greater integration of services between CSC, Aboriginal communities, other government departments and non-government agencies. 63% of federal Aboriginal offenders incarcerated in Saskatchewan are serving sentences of 2 to 5 years. With the potential for conditional release, time spent in institutions is not as long as it might first appear. In fact, there is much we must do to provide offenders with the skills they need to live a crime-free lifestyle, and, equally importantly, the incentive to apply those skills.

We wish to emphasize a continuum of care model that integrates the provision of services and the timely exchange of information and opinions between CSC and the community that will eventually see the return of an offender. To achieve this, we must improve our abilities to integrate the services and resources available in our communities. We must, overall, work to establish infrastructure in those First Nation and Metis communities that have the desire to take on greater responsibilities in the continuum of care circle.

An integrated continuum of care model can be portrayed in many ways. This circle is just one way of demonstrating the similarities and overlaps between community interventions at a pre-crime or preventative level, and post crime corrections activities at an intervention level:

CONTINUUM OF CARE MODEL INTEGRATING THE ABORIGINAL COMMUNITY AND CORRECTIONAL PROCEDURES



COMMUNITY SUPERVISION & REINTEGRATION

CSC and the Community Emphasis on maintaining a crime- free lifestyle and preventing the occurrence of another offence.

Links to intervention and release planning & to community

COMMUNITY

- Pre offence
- Pre sentence
- Post incarceration

Emphasis on social development, skills development, activities to prevent criminal behaviour.

Links to supervision & reintegration.

INTERVENTION & RELEASE PLANNING

Skills acquisition

Learning pro social behaviour

Risk reassessment

Feedback to the Aboriginal Community

Links to supervision and reintegration & to community

ASSESSMENT

Determine level of risk and need

Develop correctional plans

Risk reassessment

Feedback required from the Aboriginal Community

Section 84 process begins involving the Aboriginal community in the process

Links to community

REFERENCES

Corrado, R. and Cohen, M. (2002) *A needs profile of serious and/or violent Aboriginal youth in prison* School of Criminology, Simon Fraser University, published in CSC Forum on *Corrections Research*, Volume 14, Number 13

Ellerby, L., and MacPherson, P. (2002) *Exploring the Profiles of Aboriginal Sexual Offenders: Contrasting Aboriginal and Non-Aboriginal Sexual Offenders to Determine Unique Client Characteristics and Potential Implications for Assessment and Treatment Strategies* CSC Research Publication No R-122 2002

Hanselman, C. (2001) *Urban Aboriginal People in Western Canada: Realities and Policies* Canada West Foundation

Laprairie, C. (1994) *Examining Aboriginal Corrections in Canada* Aboriginal People's Collection, Solicitor General Canada APC 14 CA (1996)

Mercredi, O. (2002) *Aboriginal Gangs - A Report to the Correctional Service of Canada on Aboriginal Youth Gang Members in the Federal Corrections System*

Nechi Institute and KAS Corporation Ltd., (1994) *Healing, Spirit & Recovery: Factors Associated with Successful Integration,* Aboriginal People's Collection, Solicitor General Canada APC 11 CA (1995)

Trevethan, S., Auger, S., and Moore, J. (2001) *The Effect of Family Disruption on Aboriginal and Non-Aboriginal Inmates* CSC Research Publication No R-113 2001

SECTION 4:

FEDERATION OF SASKATCHEWAN INDIAN NATIONS JUSTICE SECRETARIAT

FINAL SUBMISSION

COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

FEBRUARY 3, 2004

Indian Governments of Saskatchewan

Federation of Saskatchewan Indian Nations

TABLE OF CONTENTS

Introduction 1

The Challenge Continues: First Nations and the Justice System 2

Background 3
Treaty 5
Social Issues 6
  Family and Children 6
  Changing Roles for First Nations Women and Men 6
  Youth 7
  Elders Issues 8
  Substance Abuse and Addictions 9

Systems 10
  Systemic Barriers 10
    Media
  Police 11
    Historical RCMP Relationship With First Nations
    Contemporary Relations with Police
    Excessive Use Of Force By Police
    Recruiting
    Training
    Quality of Police Service
    Senior Level Resistance To Change Within The RCMP
    RCMP Police Management Boards & Community Tri-partite Agreements
  Discretion and Authority 14
  Community Services 14
  Alternative Measures 15
  Legal Aid and Legal Representation 15
  Courts 16
  Corrections 16
  Coroners Inquests and Inquires 16

First Nations Quest for Just Relations 17
  Restoring Relationships 18
  Principles of a First Nations Justice System 19
  Royal Commission on Aboriginal Peoples and other Reports 19
  First Nations Worldview and Traditional Relationship-Building Practices 20
  Restorative Practices – Restoring Balance And Wellness 20
  Special Investigations Unit - FSIN 21
  Provincial Wide First nations Police 21
  Courts 22
Future Directions 23

BIBLIOGRAPHY 28

INTRODUCTION

The First Nations of what is now known as Saskatchewan include the Cree, Dene, Dakota, Lakota, Nakota and Saulteaux. Each nation has a history of sovereignty and a distinct identity characterized by language, traditions, values and beliefs. The laws, teachings and ancient knowledge passed down from one generation to the next describe how people relate to one another as individuals, family and community members and as Nations. The laws of creation guided daily, monthly and seasonal interaction between people, life and land. The relationships that developed between and among all of creation sustained the survival of First Nations.

Good relations are essential to live a good life. Good relations are required to develop peace and harmony, and to resolve personal and community conflict. When relationships are restored or renewed, peace and harmony prevails. It is this understanding of *good relations* that First Nations lived by for centuries, brought to Treaty, were acknowledged in Treaty, and must be considered to attain social, economic and environmental justice.

Today, all First Nations are treated as one homogenous body with the same issues, identity, history and traditions; their distinctiveness is generally not recognized. However, First Nations have had the same treatment or relationship with the Crown, have all been marginalized, oppressed and currently struggle for recognition of their inherent right to govern themselves.

Because the lives of First Nation people have been dominated by the criminal justice system through the criminalization of their ceremonies, their right to earn a living or their right to protect their traditional laws, and many other intrusive control measures, criminal law is the context which has been promoted as "justice" for First Nations. As a result, many First Nations people have a story of their lives, an incident with the police, the courts and the jails to tell. But as one Elder said "we are not criminals and our lives do not stop or end there"[1]

The scope of justice, which is the main focus of the Justice Reform Commission, is viewed differently by First Nations. A First Nations approach to "justice", based on the teachings that have been passed down from generation to generation, looks at the entire way an individual lives and the interrelatedness of life's circumstances. First Nations clearly state that "justice" must be discussed within the context of the teachings that underpin their *way of life*.

This submission to the Justice Reform Commission consists of two parts. The first part describes the continuing challenge of First Nations and the criminal justice system; the second part focuses on First Nations' quest for just relations. It will do no good to tinker with a system that has plagued First Nations for over a century. In their quest for just relations, First Nations seek fundamental structural changes and a renewed government-to-government relationship with the Federal and Provincial Governments.

---

[1] Harry Blackbird, Justice Symposium 2002, Saskatoon, SK.

THE CHALLENGE CONTINUES: FIRST NATIONS AND THE CRIMINAL JUSTICE SYSTEM

The current Canadian justice system, especially the criminal justice system, has failed the Aboriginal people of Canada- Indian, Inuit and Métis, on-reserve and off-reserve, urban and rural, in all territorial and governmental jurisdictions. The principle reason for this crushing failure is the fundamentally different world view between European Canadians and Aboriginal peoples with respect to such elemental issues as the substantive content of justice and the process for achieving justice. With respect to the former, the European Canadian definition of justice is usually centered on the word 'fairness', whereas the Aboriginal definition usually highlights a different constellation of words like peace, balance and, especially, harmony.

Royal Commission on Aboriginal People, Report from the Round Table Rapporteur,

James C. MacPherson

BACKGROUND

History has shown us that very little change has occurred within First Nations' country to improve the way in which the First Nations are treated at the hands of Canadian government and its institutions.

Countless studies and inquiries on Aboriginal people have occurred over the last decade, the most notable being the *Report of the Royal Commission on Aboriginal Peoples* which did the most comprehensive study of Aboriginal people in Canada. Many other justice reviews have been conducted focusing on Saskatchewan, most of which contain recommendations that have yet to be implemented. Skepticism exists about potential changes to correct a system that incarcerates a high percentage of the overall population of the First Nations community - a system that continues to ignore First Nations' needs even though the majority of its clients are First Nations people.

Incremental shifts have been made in the last decade, although the abject pain and high incarceration rates greatly exceed the minute improvements. Racism prevents First Nations from fully participating in the bounty of their homeland, and from enjoying fundamental human rights to their full extent. First Nations have experienced the most socially entrenched racial discrimination of any group in Canada; in fact, legislation, such as the *Indian Act*, has been created based on a Euro-centric sense of superiority.

The reasons First Nations constitute the majority of those in criminal institutions are many; most relate to the conditions of oppression and discrimination found within the context of Canadian policies in regard to First Nations. Not only do First Nations people encounter racism individually, they also experience it within systems, where it becomes normalized, and prevents their full participation as equal members of society. Past and present government control, socio-economic challenges, poverty, dependency and marginalization are a few of the reasons First Nations people comprise most of the offenders in Saskatchewan. The factors and the history that contributed to these experiences today fill books, articles, court rooms and negotiation discussions. The criminalization of a *way of life*, of a race, brought residential schools, abuse, addictions, and many other barriers that have contributed to a loss of teachings, of self respect, and of a *way of life* where all members in a community had a contribution to make.

The destruction of indigenous forms of governance, community organization and cohesion through imposed European governmental forms such as the Indian agent, systematically sidelined and disempowered traditional forms of leadership and governance.[2] Traditional economies were destroyed through expropriation of traditional lands and resources, language and culture were undermined and the very essence of community was shattered.

Socio-economic disparity statistics show that, in the cities of Saskatoon and Regina, Aboriginal people earn only 55.2-56.2 % of non-Aboriginal incomes; in other words, Aboriginal families have incomes of about $13,943 per year.[3] These statistics compare to cities with high First Nations populations, such as Winnipeg at $14,461 and Thunder Bay, at $17,376.

There continue to be many challenges to the spirits, bodies, minds, and hearts of the First Nations people of Saskatchewan. The Canadian justice system has created, and continues to create, a collective mindset with First Nations people wherein they live with the fact that contact with police will occur, oftentimes simply because they are in the wrong place at the wrong time, or keep the wrong company, and this unfortunate happenstance can result in charges or worse. First Nations learn over the course of their life that, because of their 'Indianness'; they will likely have more interactions with police, which will most likely result in a negative experience with the justice system.

---

[2] *Mapping the Healing Journey: The Final Report of a First Nations Research Project on Healing in Aboriginal Communities.* APC 21 CA (2002), p. 9.

[3] Statistics Canada. Housing, Family and Social Statistics. Statistics Canada.

Saskatchewan First Nations, through community justice programs and regional advisory services, work at preventing people from entering the justice system and help in supporting those who are in the system. The funding allocations to do this work amount to about $3.36 million per year. This figure is highly disproportionate to the total budget amount of $229.6 million per year to operate the criminal justice system in Saskatchewan.[1]

The ability to provide more community-based services to their own people is predicated on capacity building that First Nations require these necessary services.[2] The submission by the Saskatchewan departments of Justice and Corrections and Public Safety to the Justice Reform Commission in January 2003, titled "Working Together for Safer Communities", recommends building capacity, encouraging community ownership, building partnerships and ensuring the justice system respects the cultural practices and traditions of Aboriginal peoples — aspirations in line with those of First Nations. The reception, implementation, and impact of its recommendations by and upon First Nations are questions for the future.

---

[1] Government of Saskatchewan. (2001). Financial Estimates 2000-2003. Department of Finance

[2] FSIN Strategic Plan for First Nations Corrections, 2000-2004 (1999), Saskatoon

TREATY

Treaty recognized existing Indian sovereignty and jurisdiction. Furthermore, Treaty created the foundation, if not the means, for the ongoing relationship between the First Nations and the non-First Nation settlers.

Since time immemorial, First Nations people have occupied the land that is the subject of the numbered Treaties 2, 4, 5, 6, 8 and 10, in Saskatchewan. First Nations' existence was contingent upon the customs, traditions and beliefs that were acknowledged as sacred gifts from the Creator. First Nations' traditional *way of life* provided their ancestors with the knowledge and means to understand nature. Their view explained the intricate balance of nature and the place of mankind in the circle of life. Bound by the belief that all things are inter-related and inter-connected, First Nations' ancestors lived and abided by the principles and laws of nature.

Prior to colonization, First Nations people had comprehensive bodies of law that gave direction to their society. These laws were relied upon to maintain peace and harmony among First Nations' families, communities and nations. These were the laws that were followed at the time Treaty was negotiated. First Nations believed that these same laws would continue to be enforced. The First Nation leaders left the Treaty negotiations with the understanding and the belief that they had secured an agreement that ensured the continuation of their laws and *way of life*.

The negotiation of Treaty, following protocols on both sides, emphasized the need for agreement on settlement, the creation of reserves, and the promise of building a relationship together. It did not relinquish First Nations' right to determine their own affairs, to govern themselves. Treating on a nation-to-nation basis acknowledged that First Nations were self-governing. Treaty eventually became constitutionally protected with the creation of section 35 of the *Constitution Act* of 1982.

The future was to be guided through the implementation of Treaty. Treaty was a binding agreement between Nations that recognized the laws of both parties and that created a process for the relationship to flourish. However, the relationship has not been maintained for both parties; restoration is needed and ultimately renewal of the relationship. Treaty was designed to take us through this process.

SOCIAL ISSUES

FAMILY AND CHILDREN

Traditional practices include maintaining and strengthening relationships, beginning with the family and reaching out into the community and the nation. Traditional values also place a priority on the care of children. Children were considered a sacred responsibility given from the Creator. Traditional societies distributed the responsibility of child rearing to the parents, extended families and the community; the entire community was involved in the upbringing of children.

Today, many First Nation children and families experience poverty, family breakdown, crime, youth gangs, female prostitution, family violence and high numbers of First Nations children who are in care. Generations of oppressive government policies have eroded family and community systems and have created high child welfare needs within the First Nations community. Parents have lost the ability to care for children due to addictions, offending behavior and many other cultural, mental, and psychological challenges.

First Nations jurisdiction of family matters is dictated through provincial government legislation in Saskatchewan. First Nations Child and Family Service (FNCFS) agencies provide those services allowed under provincial and federal rules and laws, which is are often in conflict with First Nations culture and needs. For instance, agencies receive the majority of their funding only through taking children into care, not by keeping children out of care. Taking children into care means removing a child from their home, which is understandable if suspected of abuse but often it is neglect and family support that is lacking and therefore children need not always be removed from a home. Family support, healing and restorative practices are the services most communities would like to have available to combat family breakdown.

At times it is difficult to see the opportunities and constraints involved in making change within the FNCFS world, due to the multi-level authorities and complexities of laws governing children and families. Prevention is still not funded appropriately and budgets do not reflect agency profiles and needs. Staff training is not up to par for Agencies either.

CHANGING ROLES FOR FIRST NATIONS WOMEN AND MEN

The role of First Nations women in society has shifted significantly and has had an impact on the evolution of the family, the community and the systems within the community. Women were once the main caregivers, the teachers, the child bearers and keepers. Many now have the added responsibility of being the breadwinner and often the First Nation government leaders. The new roles have come with much responsibility but little recognition of authority for these women.

The readily available statistics of First Nations men incarcerated in Saskatchewan indicate that substance abuse and addictions are high, domestic violence and unemployment are high, and rates of men entering educational institutions are low. Traditional roles for First Nations men have been eroded along with their dignity and self-esteem. This is reaffirmed each time they are involved in the criminal justice system or social service industry, which itemizes their record of dysfunction and criminality and which never see any potential – not for boys and certainly not for men.

YOUTH

First Nation youth comprise the fastest growing population in Canada. In Regina and Saskatoon, according to 1996 statistics, 7.5% of youth are between the ages of 0 - 24.[6] A larger increase will be felt over the next ten years, creating major impacts in the economy and workforce. The aging population, the increase in the First Nations population and ultimately the opportunity for these youth provides hope for the future. First Nations believe that youth are the future leaders and with opportunities available to them there is hope for them to believe in their futures as well.

However, First Nations youth are vastly over-represented in the youth justice system, comprising more than 90% of the wards in Saskatchewan's youth custody facilities.[7] The sad truth is that First Nations youth are more likely to be placed in custody than they are to complete high school. The higher representation of First Nations youth in the justice system is a reflection of two basic factors: 1) Standard of living: the social, cultural, political and economic conditions experienced by most First Nation youth affect and create offending behavior; and 2) Systemic barriers: the racism of individual police, justice and corrections officials and the systemic racism of the justice system affect how youth of different races are dealt with in this system.

Anger, frustration, and despair fill the lives of many First Nations youth. Such self-destructive behavior projected outwards leads many First Nations youth into conflict with the law. First Nations youth make up the majority of the population in youth custody facilities and Saskatchewan has the highest charge rate for youths in Canada, at 10.234 per 100,000, which is twice the national average[8].

The Saskatchewan government has produced a youth services model which outlines a plan "to improve the way we deal with youth who offend or are at-risk to offend", by bringing government together with partners to develop services to make changes in the way at-risk youth receive treatment, schooling and jobs, with youth taking responsibility to reduce offending and to reduce youth custody rates.[9] First Nations have a number of concerns with this plan, in particular because the assumption is that youth will remain in custody. Instead of focusing on keeping youth in custody, a wide-scale, serious effort is needed to change this assumption and close down beds. Further, First Nations need to be involved in the design, implementation and evaluation of programs that impact their youth; they need a voice here as well.

Gangs

The reason for gang creation is tied to past and present assimilation policies.[10] The motivating factors are the formation of a surrogate family, identification of peers, protection, the lack of alternatives and money. Young offender facilities, correctional centers and federal institutions have become breeding grounds for gang recruitment.

Gangs use intimidation and violence to control their members and one testimony, in the FSIN's Alter-Natives to Non-Violence activity report, attests to the loyalties and violence of these societies. It tells of a young man describing a beating received by his father's gang while his father watched and did not intervene.[11]

Law enforcement agencies view gangs from a criminal perspective where enforcement is the focus, and healing and restoration are ignored. First Nations understand that the solution to this issue is to restore control and dignity to First Nation communities and to provide prevention and healing programs to help divert youth away from gang activity.

Racial Profiling is another component of law enforcement that is used in Canada. This allows police to make leaps and draw conclusions about a person based on their race. It amounts to the legitimization of racialized policing; race based questioning is condoned and accusations against First nation people are tolerated without proof.

---

[6] DIAND (2001) First Nations and Northern Statistics Division. (2001) DIAND Canada
[7] Statistics Canada. Aboriginal peoples of Canada: A demographic profile. (2001) Statistics Canada.
[8] Saskatchewan Government. (2000) "Saskatchewan youth services model: Reducing reliance on the youth justice system", page 5
[9] Ibid. Fact sheet, page 1
[10] FSIN Alter-Natives to Non-Violence Initiative Report. (2003). Saskatoon.
[11] FSIN Alter-Natives to Non-Violence Activity Report. (2003). Saskatoon.

The Youth Criminal Justice Act

The *Youth Criminal Justice Act* (YCJA) is a federal act that was implemented in April 2003, to replace the Young Offenders Act. The government of Saskatchewan is charged with the responsibility of implementing it. Given the statistics, this legislation impacts First Nations youth directly.

Some of the obvious concerns of the Act are: the lack of input of First Nations, the lack of First Nations traditions within the legislation, the potential problems with insufficient financial resources and the ultimate plans to reduce funding as more responsibility is "devolved" to the community. Further impact of this legislation may be: lack of community preparation, lack of resources to develop programs and services, the likelihood of the First Nations to again "volunteer" for the creation of community services, and little or no preparation for any potential fall out that the youth will experience.

The crime prevention funding process itself needs to be improved. Funding on a proposal basis is all too familiar to First Nations and takes an enormous amount of administration and time that involve little money. Further, evaluation of any program is never inclusive of First Nations so the impact of the program will not have any bearing on the continuation of it.

Another point to reflect is the actual procedures and policies that are adopted by the various agencies working with this legislation. Again, with no input from First Nations, and the potential to fall back into the familiar path of the Young Offenders Act, it is very likely that the process for evaluation of youth will be from a negative perspective, listing their faults and failures and not allowing for potential and successes –in other words, seeing the criminal, not the youth.

ELDERS ISSUES

As with other aspects of First Nations life the vital role of the old people in many communities has been negatively impacted over the last few generations as well. No longer are they part of the care giving, teaching tradition that they once were. The history of developing wisdom through experience and through teachings from the ancient wisdom keepers, the tradition of teaching in context, of being a vital part of the community has dwindled significantly.

The removal of children from the community, the disconnection with the parents and the elders, the modeling outside the community of old people being a burden on society has transformed the community. The impact may have seemed subtle but it has far reaching effects. The loss of language alone has taken a body of knowledge that was once shared, to be kept by a few, often the old. The Elders were the ones with the patience and understanding, the ones who offered guidance not only to the children but to the parents as well. The disintegration of the community has fragmented this relationship.

Lack of funding, inadequate housing, poor living conditions on reserves and in Northern communities, have had an enormous impact on Elders' health. When they experience sickness and ill health, they want to remain in their own communities to regain their health. Often, the resources are not available to meet their needs within the community, so they are left wondering what might happen to them in a hospital where there may require an interpreter. In such circumstances, these Elders are often left to fend for themselves.

Both First Nations and non-First Nations recognize that ancient knowledge is a very valuable resource. Inclusion of Elders as members of the community and as teachers who should be part of the decision making process is slowly being revived. However, there is often poor pay or no pay for attending meetings, and some are even left to pay their own expenses. There is often little or no community resources for programs and services for Elders basic needs or their well being. There must be specific attention paid to the needs and responsibility of Elders.

SUBSTANCE ABUSE AND ADDICTIONS

Many First Nations people suffer from substance abuse; this accounts for the majority of charges within the justice system. In addition, family breakdown, homelessness, traffic accidents and many other problems are directly related to these addictions. Addictions, though, are merely a symptom of larger problems, such as the trauma of family violence, sexual, physical and emotional abuse, and residential school effects. Fetal alcohol syndrome is a major problem and those affected are more likely to end up in the justice system, yet very little resources are available to treat and manage this condition or to prevent it.

Although many individuals and communities have made substantial recovery back to wellness from substance abuse, freedom is still a long way off for many. Instead of treating those affected by this disease as criminals within the justice system, alternative approaches need to be used to help this population.

At the front end, substance abuse-related crime needs to be treated in a different way, starting with a change in attitude within many helping professions including policing. The attitude needs to change from the behavior being a punishable crime to being treated as a disease. Wellness centres are necessary and appropriate for First Nations people to recover from drug and alcohol addictions. These centres or places of healing are necessary for diverting people from correctional facilities. This type of diversion needs to be established by each community who knows the type of issues their members face. When possible, police need to have access to this as a referral, away from the criminal justice system.

SYSTEMS

The practice of criminal justice workers, of social workers, educators, health workers and all systems workers sitting behind closed doors to deal with the "Indian problem" must stop. More studies, more pilot projects and more cultural weekend workshops are not the answer. There must be a fundamental shift in the relationship that is more reflective and responsive to First Nations of this province.

SYSTEMIC BARRIERS

The reality for First Nations in Saskatchewan is that the climb up to the basic standard of living that is taken for granted by most Canadian citizens contains many hurdles that are not often considered. The United Nations criteria for the Human Development Index that is based on life expectancy, educational attainment and income, placed Canada 1st in 2002 and placed Canada's First Nations 79th. On the whole, Canada appears to be a very good place to live, with lots of opportunity. Look again from a First Nation's perspective.

What must First Nations overcome just to be heard politically, socially and legally? The list is incredible and should start with the concept that is avoided at all cost: Racism. Because the term racism is negative and places responsibility of the action/behavior outside the First Nation, it is not a socially acceptable way to approach any of the issues faced by First Nations. This is found in the fact that the apologies for travesties committed against First Nations in the past should just be forgotten; Treaty promises are broken and litigated, taxation of First Nations is the primary issue and settlement of Treaty land obligations pushed aside by mainstream society. There is a constant minimization of First Nations rights, and acceptance by mainstream society of abhorrent treatment of First Nations through silence.

After racism, the list of systemic barriers is endless but includes: discrimination, prejudice, loss of language and oral traditions, institutionalization, perpetuation of a "dependence mentality", poverty, disintegration of the family, erosion of traditional governance, oppression, victimization, marginalization, exclusion, and employment equity turned statistical gathering.

Media Perceptions

The media plays out many of the systemic barriers daily. One does not have to look very far to find the images and messages about police, and those involved in the court systems. There are many law enforcement personnel who implicitly condone the use of force and take an adversarial approach to stamping out crime. This scenario often puts minorities in the role of criminal and white people in the role of judge, enforcer, upholder of values and savior. It is played out upon First Nations people in endless encounters with police, thereby allowing the public to accept the use of force by police against First Nations people. Stereotypes of First Nations as violent, out of control, and First Nations youth as troublemakers are messages perpetuated by print and television programs including the news.

Media paints an even stronger picture of "black and white" (which is already existent), which places the police as the "good guys" and others as the criminals; therefore, most of the time, the real issues are ignored. In the reports of the death of Melvin Bigsky, the subtitles were extremely negative and took away from the fact that he was a human being. Another example is Keldon McMillan: although many were unaware of his Aboriginal background, the media printed headlines such as: "He died like an Indian." They were all subject to much sensationalism and denigration. These and other incidents were not reported with the sensitivity one would expect for human beings dying in unfortunate circumstances.

POLICE

The primary link that First Nations people make to the justice system is through the police. Since the inception of the North West Mounted Police, First Nations people have had numerous encounters with police that have resulted in negative experiences. Rather than focusing on the safety for all citizens, the police adopted a role as enforcers, unfortunately with a racial bias. Elders tell us that the translation for the police is like "the men who come to take you away". The reality of the relationship is not too far from this translation.

The issues around police and the First Nations members of the community reach far back into the relationship between First Nations and police. The difference now is that the treatment is so blatant, so obvious that it can no longer be ignored by mainstream society. Complaints of excessive force, of death resulting from police brutality, of First Nations women and girls raped, and of assault and institutional abuse, have now floated to the surface of the criminal justice system. This is a direct result of the police practice of dropping off First Nations people outside the city of Saskatoon. Lloyd Dustyhorn, Rodney Naistus and Lawrence Wegner along with survivor Darrell Night have crystallized the police problem so that it can no longer be ignored.

The problems regarding First Nation-Police relations receives, local, national, and international attention. The "Saskatoon Policing Incident" or the more romantic term "starlight tour", has given our community a national profile on not only the issue of policing but on the overall human rights issues faced by First Nations people in Canada. The response to this "incident" is critical for all citizens in Saskatchewan to address this very unhealthy relationship.

In February of 2000, the silence of First Nations people was finally broken and their voice had an opportunity to be heard through the Justice Reform Commission. Although these men drew world attention, their stories are not uncommon for many First Nations people here and around the country.

The FSIN continues to look for solutions for the problem, through a 35 member RCMP task force, numerous investigations, multiple complaints, coroners inquests, inquiries. There are still no answers and the relationship continues to dissolve.

Historical RCMP Relations with First Nations

The role of the RCMP during the settlement of the Northwest in 1869-1870 was to implement the oppressive policies of the Federal Government upon First Nations. In fact, the RCMP carried out the orders of Indian agents, such as preventing people from leaving the boundaries of the reserve and confiscating sacred bundles and charging people for holding ceremonies.

Historically, the "red coats" did not fulfill their duties to protect and respect Treaty. Leaders such as Big Bear and Poundmaker were fighting for basic human rights of their tribes; yet, the government, aided by the RCMP, treated them like criminals. History does not help with relations today because First Nations people believe that the RCMP continue to protect "white" people and not them.

This early history has had an effect upon the relationship between First Nations and the RCMP. These memories remain in the minds and hearts of the many members of the First Nations community. The negative association of these historical events is reinforced by First Nations' experiences today. This history must be acknowledged and honestly examined before there is growth in the relationship. Responsibility must be taken for what has happened.

Contemporary Relations with Police

The everyday life of a First Nations person involves accepting the fact that he\she will eventually have contact with police. Those individuals on the street such as addicted people and youth have a greater chance of negative police contact because they are lower on the socio-economic scale and thus more vulnerable. This reality impedes First Nations people from attaining their goals in life. Put simply, it is a crime to be First Nation.

Many First Nations people, particularly those who are socially marginalized, have had to deal with clashes with police. Although there have been inquests and analyses of the deaths of two men on the outskirts of Saskatoon in 2000, many First Nations people believe the truth has not come to light.

It is difficult to be confident in a system that does not use transparent and accountable procedures through its own policies and practices. It has been cited in many documents, that police hide behind the "Blue Wall", primarily in investigating alleged misconduct of each other. This practice severely hinders the chance of uncovering any wrongdoing by officers, which cumulatively erodes any existing confidence in the current accountability mechanisms. The fact that the police force is so untouchable leads to a multitude of problems for the overall structure and daily operating procedures designed to ensure safety within First Nations communities.

The Justice Reform Commission was established because of FSIN's strong advocacy. Hope and expectations by First Nations reside with this Commission; it is expected that it will do what cannot be done by the people themselves: to convince both non-First Nations and Governments that the justice system, including many policing practices, must be changed.

It is interesting to note that the police system has evolved into a court related role, where police officers have become an extension of the court system, rather than the safe keepers or even the investigators that they were intended to be. It is not uncommon for the police to be the first contact, the referral service, the investigator, the guard, and the prosecution.

Excessive Use of Force by Police

First Nations people experience police harassment, and the use of excessive and unnecessary force at the hands of the police. Furthermore, police are often most visible in poverty-stricken areas of urban centers. First Nations people in southern cities believe that police target them for apprehensions for minor violations. They have too much contact with the law. Police, having high status in society, are granted flexibility with regards to societal norms of behavior as they uphold Canadian laws. Consequently, some of them cross the line to excessive force, an abuse of power for which First Nations people become victims.

When problems arise where First Nations are involved, the police response is slow and approached with suspicion. Police seem above the law, they hold the power of information, what is shared and how. They investigate themselves. Any issues that the force and its members are facing are unknown. The fortress is tight.

Recruiting

There must be system changes to the way police do business. Police forces need to improve the way they interact with and treat First Nations people first and foremost. Only when this improvement occurs will First Nations individuals become interested in joining these organizations.

Community relations must be a priority. Inclusion of First Nations in recruiting, assessment, evaluation and policy setting is critical. Recruiters must have insight into First Nations communities, they must understand and respect different cultures and they must develop ongoing relationships. First Nations officers within the system, within First Nations forces and First Nations citizens must be part of the entire picture and part of the "public" to be protected.

Training

Although the training regiments at police colleges have incorporated First Nations education to a small degree, the amount of time spent on cultural awareness must increase. Training of all police officers must include community development approaches that focus on solutions and healing. Most of the police's clients are First Nations people; therefore, much of the training should be in relation to understanding First Nations history, worldviews and cultures.

More light should be shed upon some of the questionable practices of police, in an attempt to enlighten recruits' awareness and get to the root of problems with Police-First Nations contact. Training of recruits should be at a First Nations institution, alongside other First Nations people.

Quality of Police Service

First Nations people in the north experience an opposite problem to that of their southern counterparts; they do not receive adequate services. The reason given is that the resources are inadequate to police in isolated and northern communities.

Regarding incidents of violent acts including homicide, northern First Nations people are concerned most with the slow response time and protection services by the RCMP. Communities are often forced to wait for days for services. They require more efficient, responsive police services.

Senior Level Resistance to Change Within the RCMP

First Nations people think that many commanders or supervisors have an outdated style of training and perspective of policing in First Nations communities. When problems arise, efforts to make changes that address First Nations' concerns by community members are often ignored or rejected by these commanders.

It has been proven that members with culturally sensitive perspectives treat First Nations people with more respect and consideration; they are better at motivating people, being flexible, and working within a team environment, all aspects that make police more humane. Unfortunately there are not enough of these senior level people. And due to the systemic institutional practices, the solution cannot be left to the Police. Even though there are more First Nation officers, these problems persist.

RCMP Police Management Boards and Community Tri-partite Agreements

Beginning in 1993, the FSIN and federal and provincial governments signed a Framework Agreement on policing that created thirty Community Tripartite Policing Agreements between the individual First Nations and Governments. These agreements are overseen by Police Management Boards in the communities whose mandate is to provide direction to the RCMP and build capacity within the communities.

Unfortunately, the police management boards face obstacles with resistant commanders who prevent communities from participating in decision-making about the police services. And, like all other First Nation institutions, the boards are hampered by miniscule funding, prohibiting them from fully exercising their rights and duties. They have little or no authority; this leaves them developing policy that may or may not be implemented.

Another serious issue concerns the actual amount of time RCMP members spend within the community. The community tripartite agreement stipulates that members are to spend up to 80% of their time on reserve; however, current practice falls short of this obligation.

The rationale for this shortfall in service is that reserve detachments do not have enough equipment for police to complete their tasks, so they travel to the nearest main station to file reports. The RCMP tracks these hours spent on and off reserve and First Nations have concern about the validity and the accountability for these numbers.

DISCRETION & AUTHORITY

Discretion and authority are the cornerstones for law enforcement in Canada. The actors from police, to prosecutors, to judges and lawyers right through to mobile crises, social workers, and corrections workers have discretionary powers. Discretion plays a vital role in the lives of people who come into contact with the criminal justice system. This is because each story plays out in its own way and because each person has their own way of judging and perceiving what is happening, what should be the outcome, and what is best for the person or community and society.

The laying of a charge, proceeding with prosecution, diversion at any stage, who to pursue for information, how much information to record, the weight to give information shared, the measurement of credibility of a person sharing information, who can or will become involved, and how the charges will ultimately be disposed of are all decisions that involve discretion by a criminal justice worker.

Doing what is best in a given situation, given one's perspective and understanding will inevitably shift from person to person, on what they are taught, what legislation guides them, what their experience tells them and so on. People in this position must be discreet, and must conduct themselves wisely and use caution. Issues are addressed in the most expeditious, cautious manner and processed with the required amount of information. This "objective" approach is held in high esteem by the criminal justice system but goes against First Nations teachings and traditions and culture.

Clearly, the person with the issue to be resolved must be allowed to participate and feel part of the process. It is important to know what their values are, who their role models are, what their strengths are and how they learn and contribute. This "subjective" approach speaks directly to the person and to their potential within a given community. This approach is conducive to the First Nations perspective. To focus on a person's weaknesses and problems or the most efficient way to process them in the criminal justice process is a negative use of discretion. Discretion is a tool to be used in a healthy way and with the development of more reintegration and renewal processes.

COMMUNITY SERVICES

Community based services are required for every community in Saskatchewan. They allow for community input and make services accessible to First Nations. They create employment and establish contacts in the larger context within the province and Canada. They are however, plagued with problems.

Many community service employees experience challenges such as being overburdened and underpaid. They lack technical and political support both locally and regionally. They often become heavily dependant on local people to volunteer.

When positions are transferred from the province to the community, the required service delivery money does not accompany the position; Bands receive only the salary. In addition, the administration becomes the focus with workers who have to double and triple report to governments. In order for Bands and Tribal Councils to fund positions they must make multiple proposals to various government departments for continued services that are stretched to meet all the demands of a community. This does not even touch on any type of prevention or restorative service or program. For example, they often operate on a volunteer basis.

All governments need to re-evaluate their programs and work together to devise a better system of collaboration and coordination to improve the services they fund at the community level. The lack of financial resources leaves the community and the services very vulnerable. This is further complicated by the fact that a number of employees trained and hired by the community are often lured into the provincial system, where stable jobs and better salaries are available to them.

There is a need for more First Nations regional training initiatives, training and additional courses. The mediation-training program offered by the FSIN, needs to be accredited by a post-secondary institution. Further, an important issue is the need for First Nations Justice of the Peace training. A para-legal type education would aid in dealing with the many justice issues addressed by justices of the peace, justice workers and court worker issues.

ALTERNATIVE MEASURES

Incarceration should be considered as a last resort when considering or working within alternative measures programs by either the non-First Nations governments or Tribal Councils.

Perpetrators of crime are considered for alternative measures based upon: circumstances of case, eligibility of the accused and nature of the crime, impact of offense on the victim, other various factors, and whether the accused accepts responsibility for the offense.

There is an option where a police officer has the discretion to decide whether or not the accused can be put through alternative measures, which saves on court time and a lengthy process that usurps too many resources. This option is a pre-charge referral, whereas the court process is the post-charge referral.

The programs rely heavily upon mediation when handling the cases between the offender and the victim. Incorporating more First Nations values into it is difficult because it is still inherently a government-run program; furthermore, people who are outside of the community determine who is eligible.

LAWYERS AND LEGAL REPRESENTATION

Maneuvering and surviving the justice system has become common practice for some First Nations families due to the intergenerational exposure to a life soaked in judgments of criminal life styles. Homeless individuals view incarceration as a safe option where one has free lodging for a period of time. Unfortunately, this view has become the norm for a large numbers of adults and youth. With the increase in gang activity, young First Nations men find themselves in even more contact with the justice system.

Legal Aid is often the only option for many accused First Nations people. High Legal Aid caseloads result in improper, absent or poor legal representation. There have been instances where First Nations individuals appear in courts with no Legal Aid representation. As with other institutions, lawyers often lack cultural awareness and understanding; in addition, some are not showing up for court, which consumes a lengthy and unnecessary amount of court time.

At times, court workers take over the job of looking after First Nations people in the courts because of their concern for these people. This creates problems, such as violation of the court worker mandate, work overload and under-qualification.

Private council and prosecutors also figure prominently in the processing of First Nations people in the criminal justice process. Again the systemic barriers come into play and the lack of understanding of the First Nations community, plague the individual caught up in the system.

Some education about legal rights is required. People need to know the expectations in court and the role of each person in the courtroom. This would help when a person ends up in the court process and needs to know what is expected of them and of all the other people in attendance.

COURTS

Courts and more specifically, judges, have a lot of the discretion that is available within the criminal justice system. The judge assesses the best sentencing and allows, within guidelines, for the time the trial takes as well as the way in which the information unfolds, making decisions throughout the process.

Again objectivity is what is considered key to this adversarial process and it is how decisions are made about what this external reviewer deems appropriate. For First Nations, this type of court system and judgment has proven, over generations, to be a key factor in the oppression of First Nations people.

Generally, judges are beyond approach. They want only certain information. They are responsible for their own education; they work within a system that has the potential to perpetuate systemic barriers if a judge is so inclined. When the most common contact with First Nations is through the criminal justice process, the kind of education that judges receive about First Nations, is as negative as the information available in the media. First Nations values need to be part of the evaluation process in the criminal justice system before that system can have any impact on the lives of First Nations.

Recidivism rates among First Nations show that punishment through the courts is not the deterrent it is held out to be. Judges vacillate between leniency and being tough on crime, all at the expense of First Nations.

CORRECTIONS

Statistics on the critically high proportion of First Nations people in prisons have been desensitized enough that people merely accept them as fact and forget that some of these offenders can turn their lives around. One First Nations traditional teaching recognizes that everyone should be seen as recoverable. It is no surprise that prison has become a First Nations death sentence, because there is no way to escape the length of sentences and inevitability of being charged. Although there may not seem to be an easy solution to this massive problem, small steps can be taken, which is better than no improvement at all.

Many problems exist for inmates in provincial correctional facilities. There are major problems with remand. The places where they are currently housed are crowded; inmates spend lengthy waiting time in remand, and they are not allowed to participate in programming. Administrative problems also exist. For example, paperwork gets lost within the system, preventing inmates from attending funerals. Far too many times, systemic breaches occur, such as failing to appear, sometimes because the person could not get to town to attend court, or because of lack of money. This results in institutional charges and the creation of an ever-growing criminal record.

CORONERS INQUESTS & INQUIRIES

Many of the tragic deaths within the First Nations community end up within the confines of a Coroners inquest, which has very little power to make policy or recommend legislative change. The recommendations that come out of these inquests are merely suggestions for change within the system. They hinge on the goodwill of all those within the system and government to implement the recommendations.

Inquiries are unfortunately as influential. The little hope rests on the goodwill of the people within the system. Both inquests and inquiries suffer from problems with accurate evidence, timeliness and the same systemic barriers we see in the courts and policing. There is hope that the record created by these processes will add to the barrage of information of unjust relations First Nations face in the criminal justice system.

Institutional change, to give these processes any teeth must require that they be more inclusive of First Nations as resources to participate in the information gathering process and the ultimate creation of recommendations.

FIRST NATIONS QUEST FOR JUST RELATIONS

...the circle symbolizes the oneness of First Nations people with the Creator and the Spiritual, social and political institutions of the First Nations. This act/ statement is rooted in the doctrine of *wahkotowin* **(the laws governing all relations) and** *miyo-wicehtowin* **(the laws concerning good relations).**

From Treaty Elders of Saskatchewan, p 14

RESTORING RELATIONSHIPS

Respecting First Nations traditions and the relationship developed at Treaty, the FSIN vision of justice development is to create a First Nations system that reinforces traditional First Nations values, cultures, and spirituality, one that is trusted and respected by First Nations members in Saskatchewan. This relationship must restore peace, mutuality, prosperity, stability and security for all of creation.

A First Nations justice system promotes healing of First Nations individuals, families and communities, and provides the flexibility to accommodate the cultural, spiritual, geographic and linguistic diversity of First Nations people. It integrates First Nations systems with mainstream options to create an environment of trust and respect for each other.

The justice system will need to be holistic in nature, and provide avenues for First Nations individuals and their families to deal with addictions and deep-rooted issues that led to the negative conduct. The system would be designed to criminalize sick people less, notably those with addictions. Its focus would be on good relations, maintenance of relations, restoration of harmony and renewal of the relationship when problems arise. Treatment, not punishment, and healing would be the priority, and incarceration, the last option.

As a holistic system, it will guide people through an integrative process to services that will address and coordinate their physical, emotional, psychological and spiritual needs to strengthen the entire person. In order to achieve this healing continuum, there is a strengthened inter-departmental engagement among First Nations governments and Canadian and provincial governments.

Justice must reflect a continuing relationship; maintaining the relationship is everyone's responsibility and as a result, First Nations individuals, families, communities will become vital, healthy and in control of their own future.

First Nations envision healthy Nations with the capacity to design, govern and implement their own systems according to their spiritual beliefs, values and traditions. Honor, respect, responsibility and humility found in the principles of Treaty will restore the relationship and guide this change process.

The four major areas on which to begin storing the relationship are: First Nations governance, life long learning, economic development; and health and social well being.

PRINCIPLES OF A FIRST NATIONS JUSTICE SYSTEM

The FSIN's mission is to strengthen First Nations individuals, families, and communities through the restoration of traditional First Nations justice and related practices. The guiding principles will encompass the following:

- The First Nations justice system will include social, economic and environmental harmony based on traditional principles of First Nations governance.
- The issues that plague an individual or community will be approached in a way that treats all of the issues that lead up to the negative action, not just the immediate symptoms. This holistic approach will assist individuals in addressing their physical, emotional, psychological, and spiritual needs, as well as the socio-economic factors affecting adversely their well-being.
- Reflects First Nations values, culture, and spirituality in redressing injury, and the role of Elders in assisting community members to find solutions to disputes and correct imbalances.
- Does not dismantle a person's dignity or self-esteem based on the actions but looks at the contributions as well as the problems that person faces/causes.
- Works with other governments on an equal footing, respecting everyone's ability to participate.
- Driven by First Nation community members and the options they wish to implement. First Nations participate fully and equally in all aspects of the justice process.
- The justice system will operate independently from the First Nation and Tribal Council, and FSIN body politic to ensure that it is completely independent of adverse political influence.
- Based on the protection, safety and respect for First Nations and incorporates the ancient knowledge and traditional teachings.
- Respects First Nations women and their importance in and to First Nations culture and spirituality.
- Treats First Nations youth in a respectful manner, and they and their families must have access to Elders or spiritual advisors to gain understanding of their role in and value to the community.
- Healing is a priority to restore the community balance.

ROYAL COMMISSION ON ABORIGINAL PEOPLE AND OTHER REPORTS

The comprehensive Canadian study on issues faced by Aboriginal people in Canada was undertaken in the Royal Commission on Aboriginal Peoples. The study looked at every aspect of First Nations participation in Canadian society and emphasized First Nations' inherent rights to self-determination. At the end of the five-volume report and several other publications, RCAP sets the stage for a new relationship based on past experience, present conditions and hope for the future.

Although RCAP was comprehensive, it is yet another study on the lives of First Nations that resulted in little or no action. The record of studies, commissions, inquiries, inquests, reports and academic papers has changed little in the way First Nations are treated by the criminal justice system. First Nations themselves have the information to share but it must be put through the statistical filter, an academic study, and often then written by a recognized authority in order to establish any truth or value.

The Penner Report completed in 1983 also noted the need for a new relationship, but which strongly stated the pitfalls of building a relationship through the Department of Indian Affairs. They had far too much control in all aspects of First Nations lives already. In addition to these, are an abundance of reports that range from health care to incarceration to policing to housing. Some want to tinker with current systems but few go so far as RCAP and Penner in boldly stating what First Nations live everyday.

First Nations in Saskatchewan together with the Federation of Saskatchewan Indian Nations know that a new relationship is the only answer. The casualties of the current systems are beginning to add up in a very visible way in Canada. The potential for growth and success is at hand and it will be up to the citizens of each community to start down a new path.

FIRST NATIONS WORLDVIEW AND TRADITIONAL RELATIONSHIP-BUILDING PRACTICES

Even though each of the six First Nations groups in Saskatchewan possesses different languages and cultural traditions, they share similar spiritual philosophies, teachings and laws.[12] The various cultural groups share the principle of getting along, which is called Miyo-wichetowin in the Cree language[13].

With respect to justice, mainstream cultures put a high value on classifying people as "guilty" or "not guilty" and penalizing those who fail to abide by these values. In addition, the justice system, concentrates on the crime itself and the sorting out of each person's story and how all of these elements collaborate with the final criminal act.

The First Nations worldview focuses on the responsibility of a person to their family, community and the Creator. This responsibility translates into accepting the responsibility for one's wrongdoing. This perspective does not focus on the offense itself, but instead on the reasons for its occurrence and the transgressor's acceptance of the consequences. The knowledge of the interconnectedness with all living things is important. The present justice system places little importance on trying to understand the breakdown and restoration of relationships.

Another concept still central to First Nations is that spirituality is a way of life and every part within society is interconnected. Issues are not separated and isolated, as they are in the current justice system, which is compartmentalized in terms of its application and operation.

RESTORATIVE PRACTICES – RESTORING BALANCE AND WELLNESS

First Nations' worldview is unique in its emphasis placed on relationships. Justice, in a traditional First Nations sense, is to live a good life, to maintain, restore and renew relationships to find balance and peace in the community.

Although much language and traditional teachings have been lost to First Nations in Saskatchewan, cultural laws and values still remain. Workable solutions to the current impasse are difficult to find; reviving First Nations traditions and restoring and returning them back to First Nations justice institutions are initial first steps. They are responsible to find their way and once the systemic barriers are acknowledged, efforts to remove them can begin.

First Nations people must take the opportunity to re-introduce and implement restorative, balanced, healthy approaches to dealing with crimes and offences. A number of communities across Canada are utilizing this method of addressing the many ills of their society.[14]

Healing is the term used to describe practices that help restore balance and health, back to a First Nations community. This movement began for many communities back in the early eighties by adopting a drug and alcohol free life. In addition, some communities managed to divert sex offenders out of jail and into healing circles and traditional First Nations practices of restoring health[15].

---

[12] Cardinal, Treaty Elders of Saskatchewan - Our dream is that our peoples will one day be clearly recognized as Nations. page 9.

[13] Cardinal, Treaty Elders of Saskatchewan - Our dream is that our peoples will one day be clearly recognized as Nations. page 14.

[14] Solicitor General of Canada. Mapping the Healing Journey. (2002), page 74

[15] Solicitor General of Canada. The Four circles of hollow Water. (1998)

The concept of utilizing a circle for healing, restoring balance and wellness is a universal principle and one shared among the six cultural groups within the 73 Saskatchewan First Nation communities.[16] This fundamental concept can and is being used on many fronts within the community for healing.

SPECIAL INVESTIGATIONS UNIT -FSIN

In 2000, FSIN responded to the tragic freezing deaths of First Nations' men in Saskatoon by creating the Special Investigations Unit (SIU). In addition to working on relationship and partnership building between municipal police forces, the RCMP, the Special Investigations Unit monitors all reported investigations. The impetus for this was the flood of calls to FSIN from First Nations people concerning their safety and complaints against police.

SIU provides an independent review process regarding police complaints. It intervenes and takes statements, submits them to the police and monitors the progress, thereby providing an external review. Future plans have the SIU evolve into a legislated, independent, civilian oversight entity that conducts investigations.

The SIU objectives are:

- To provide First Nations who have been mistreated by law enforcement officers with a compliant friendly alternative to mainstream offices of public complaint;
- To ensure that complaints are investigated; and
- To provide complainants with protection from retaliation.

This kind of oversight body plays a multifaceted role in the community. It ensures trust in a process where previously there was none. It provides legitimacy, expediency, and efficiency to the investigation and review process for First Nations people. Its professionalism and confidentiality leaves politics aside. It can be a valuable tool in public relations and education for the province. Finally, it is First Nations run, and has can operate on First Nations' principles as well as work with the current justice system.

PROVINCE-WIDE FIRST NATIONS POLICE FORCE

A different approach to policing is needed, modeled after a somewhat traditional structured method of traditional First Nations "societies". This model centers on a more relationship-building approach often called peacemaking. There are models from our past and other parts of the country that reflect a humanistic way of dealing with people. Through proper training in a traditional (First Nations) approach, an officer not only learns to deal with crisis, but also spends most of his/her time maintaining relationships, educating, and supporting people to deal with their own problems, and thereby upholds a respectful place in the community.

The First Nation Chiefs in Saskatchewan have resolved to establish a police force that would serve all reserve communities who request it, created and operated by them. First Nations' uniqueness, accounting for culture and worldview, would be demonstrated at the community level where a holistic, preventative approach to strengthening relations and cultural conflict resolution methods would be displayed. A peacemaking approach is the orientation that First Nations will use in their own police force. The FSIN has a strong commitment from leadership to develop a First Nations Police Force, as evidenced by a resolution carried at its February 2003 Legislative Assembly.

In reality the racism faced by First Nations throughout the Criminal justice process, ushered in by police, will be the impetus for the creation of a First Nations Force. Oppression, racism, internal police issues all point to a need for First Nation Tribal policing to deal with First Nations issues, a First Nations force that is predicated on relationship building.

[16] Cardinal, Treaty Elders of Saskatchewan, Page 15

COURTS

The creation of Tribal Courts and the use of tribunals are both options being considered by many Tribal Councils and Bands. Establishing Tribal Courts, like the American Indian system, will require resources and changes in legislation. On the other hand, steps can be taken toward this goal by the implementation of Tribunals to resolve many issues such as land disputes. Treaty Four First Nations have chosen this option in their goal to become more self-determining.

The possibility of creating avenues where people do not have to enter the system if they chose a traditional First Nations system is our goal. This would leave the courts to deal with First Nations who chose to enter that system but would also provide for the option of dealing with all of the addiction, abuse and socio-economic issues, on an ongoing basis within the First Nations model.

FUTURE DIRECTIONS

It is time for First Nations to take their rightful place in this province. First Nations must be party to a government-to-government relationship with the Federal and Provincial Governments to ensure the health and well being for all. If the relationship is guided by respect, honour and responsibility, the relationship will ensure a positive future for generations to come.

It is time for positive change. Everyone in every institution and system (family, community, nation, governments) is responsible to ensure that positive change occurs. Change must begin by rethinking *justice* matters. The topic of *justice* encompasses the broad scope of relationships and the interrelatedness of all parts of the whole that are fully connected with one another. First Nations do not want to replicate the current flawed system; tinkering with the system is unacceptable. First Nations must determine for themselves what their nations need.

Rethinking *justice* matters means refocusing on the areas that have the most impact on the lives of First Nations. These areas are: First Nations' governance, life long learning, economic development, and health and social well-being. Each area will require fundamental changes to the existing systems that have undermined First Nations *way of life* and unique position within Canada. This major assessment refocus will need continual review and evaluation by First Nations and the other parties of the relationship.

First Nation Governance

Governance is about relationships. Good governance consists of good relations that are based on the values, customs and traditions of each First Nation. As First Nations re-establish their right to govern themselves, their people and their ancestral lands, and reclaim their jurisdiction, intergovernmental relations must change. Some changes are already under discussion within the FSIN self-governance process. The following matters must be considered:

1. The establishment of an independent First Nations Office to ensure that the government-to-government relationship is recognized and respected by First Nation and non-First Nation Governments. If there is meaningful participation from all parties, positive intergovernmental relationships will develop.

2. The establishment of a First Nations independent oversight body. This body must be built on the success of the FSIN Special Investigations Unit and must be expanded to include children's advocacy, medical, social and environmental rights.

3. The Province must step aside in areas where First Nations have determined that they will assert their own jurisdiction. First Nation laws must displace province and federal laws as First Nations laws are developed and implemented.

4. The development of an internal and external process with all governments to ensure an integrated approach to policy development in the areas of education, children and families, financial decision-making, and program and service delivery.

5. The development of an internal FSIN process that would allow Tribal Councils and First Nations to work on common issues such as: establishing a First Nation consultation process that would give a meaningful voice to each member of a First Nation, and developing a standard for provincial and federal government discussions and negotiations.

6. The design and delivery of programs and services for First Nations, by First Nations, according to the needs identified by First Nation communities.

7. Leadership must be knowledgeable about tradition and cultural teachings. They will work to develop

future leaders who are trained to utilize methods and techniques taught through traditional and ancient teachings, as well as contemporary governance.

8. First Nation law must be recognized and given paramountcy over First Nations people and First Nations land. When First Nation issues arise in Court, appropriate expertise must be sought by the Courts to ensure that there is some way of knowing who should be approached to validate traditional knowledge prior to making decisions.

Life Long Learning

Life long learning is intergenerational, intercultural, inter-tribal and inter-governmental. Everyone is part of the learning process, and as such, each is responsible to ensure that learning must take place within a respectful and open environment where everyone recognizes that shared learning experiences are the bases for community and capacity development.

First Nations view their world as an ever-changing relationship between people, life and land. The relationship shape-shifts from one issue to another: family and community, health, social development, education, conflict resolution, fair treatment and just relations. Learning is the key to understanding the relatedness and connectedness of First Nations to their ancestral lands that are the source of their inherent authority.

For centuries, First Nations exercised their authority to safeguard and develop their languages, cultures, economies, identities, institutions and traditions. Today, First Nations endure the challenge of maintaining the relationship teachings that emphasize the importance of discipline and the skills development taught through First Nation languages, spirituality, culture and traditions. The following matters must be considered:

1. There must be respect for First Nations' knowledge and for the ancient teachings upon which relationships to the spirit, the environment, the land, and all living things are connected. Knowledge and information must be shared; however, others are now appropriating aspects of traditional knowledge. This is an issue. There needs to be recognition that First Nations traditional teachings are intellectual property.

2. Institutional learning that reflects First Nations experience and knowledge must be respected. Institutional learning includes a vast array of learning processes from: home, family and community life skills to pre-school, K-12, post-secondary and specialized training. Every educational institution must serve the needs of First Nations and must reflect the demographics of the Province. First Nations will then have meaningful participation in the processes.

3. First Nations' traditional laws must be taught and given the proper recognition as are the laws of other nations. These teachings are important for each person who lives under the laws: to know how they work and apply, how to respect them, and how they can advance First Nations' participation in the development of their own systems. Everyone would benefit from this education (children, youth, adults, peacekeepers, community workers, judges, lawyers, police, unions, and leaders.) This type of education is foundational, long term, and must be part of every governmental system.

4. Institutional and traditional teaching must be used to identify, assess, confront and eliminate systemic barriers that plague First Nations today. This assault on systemic barriers should be taken on every aspect of society that allows and perpetuates all types of systemic barriers. "Weekend workshops" do not work to eliminate systemic barriers; the elimination of barriers must be built into the relationship permanently. It must be recognized that these barriers will not go away by themselves. First Nations need to ensure that these are eliminated from their own governance systems; they can teach from example.

5. Relationships based on trust and respect will promote open communication and conflict resolution. Communication work must be ongoing; it must be addressed internally by First Nations and externally through intergovernmental relations. Learning from past experiences can offer teachings for present and future relations.

6. The media plays a large role in how First Nations are portrayed and what people will learn about First Nations. The development of good relations with the media will ensure that what is known and reported about First Nations is informed, balanced and proper protocols have been followed when required. The relationship can guide how information is gathered, who has access to information and how it is reported.

7. The diversity of First Nations who live in Saskatchewan must be recognized and respected. There are differences among the Cree, Dakota, Dene, Lakota, Saulteaux, and the Nakota. Each community has a unique history; their current status, demographics and opportunities may differ from one region to the next. It is important to focus on the strengths of each community and to build on their successes.

8. Research and development of cultural, traditional and linguist matters must be preserved; this includes written and oral history. The First Nations' communities, the First Nation University of Canada, the Saskatchewan Indian Cultural Centre and the Saskatchewan Indian Institute of Technologies must be party to this development.

Economic Development

Economic well being maintains self-respect, dignity, self worth and promotes prosperity. First Nations' traditional life and social status has been eroded, the connection to the land has been denied and the right to livelihood has not been fully recognized or implemented. Treaty affirmed First Nations' inherent right to livelihood and a continuing right their traditional economies. Economic well being of First Nations would have a positive impact on the Province as a whole. The following matters must be considered:

1. First Nations need an economic base to gain prosperity. For example, commercial aspects of traditional economies require jurisdiction over resources. To deny this would result in continued oppression, poverty, dependence and unemployment of First Nations people.

2. Expansion of institutional capacity of First Nations to facilitate the implementation of First Nation governance. This is promoted through positive labor relations, economic diversification, and environmental responsibility.

3. First Nations are the objects of a service economy for areas such as social services, justice, education and health. Sustained economic development must take the place of pilot projects and of administering non-First Nations governmental programs and services.

4. The assessment of land use development, water and resources needs to be conducted through a consultation process with First Nations that respects First Nations ancestral lands, laws and lifestyles. Outstanding land claims must be resolved within a First Nations collective process. First Nations must assess their traditional territories and land base to ensure that they are truly stewards of the land.

5. The removal of systemic barriers will provide equitable employment opportunities and create long lasting employment opportunities. First Nations employees and employers will experience positive labor relations, no matter where they are located within the province.

6. A First Nations Public Service Commission with culturally appropriate labor relations must be established to set employment standards, employment evaluation and assessment, equitable treatment, job security and career options for First Nations.

6. There must be access to capital available through federal and provincial governments, as well as First Nation avenues like the First Nations Bank, SIGA, and other resource revenue sharing opportunities. Current resources should be reviewed and redirected appropriately with the input of First Nations.
7. Increased community employment, technical and professional careers, ongoing training for employees, career options for youth and personal development will enhance community economic well being, give hope to First Nations people and ensure First Nations participation in the economy.

Social and Health Well Being

Community capacity building is directly related to the health, economic and social well being of First Nations. The ability to govern and to contribute to community, to have healthy relationships, is directly correlated with the health of a First Nation. The following matters must be considered:

1. There must be an acknowledgement of past oppression through systemic barriers that include colonialism and loss of: language, family ties, culture, identity, and the value of First Nations contribution to the development of Canada.
2. Emphasis must be placed on building people and healthy communities rather than on punitive, retributive and condemning judgments. This includes improved relations through integrated services for all governments and communities.
3. Any system that is designed to serve First Nations must focus on the whole person within a community context. There must be balance within the physical, spiritual, emotional and mental aspects of the person and services must be provided in an integrated manner.
4. If resources are shared appropriately with First Nations as originally negotiated through Treaty, people will have hope and will be able to determine their own future. The institutionalization of gangs, the disintegration of families, and the perpetuation of dependence on government will decrease.
5. Housing is a top priority for First Nations to have stable, safe and secure living environments, to build confidence and increase living standards. Adequate shelter positively affects children's learning abilities, access to employment opportunities and overall health.
6. Places of safety where positive intervention can occur, where relationships can be renewed and balance restored are necessary. Other types of institutions where healing can occur and that provide positive interventions are needed for other members of society who are vulnerable - offenders, victims, youth, adults, men and women/children and the elderly.
7. There must be a mechanism for community to assess its strengths, to build on their successes, to prioritize needs and to develop processes to meet their particular needs. All levels of government must support this effort.
8. Alternative measures, community support, counseling, health promotion, education, and employment must all be available and accessible in the community. Resourcing for communities must be a priority.

CONCLUSION

The areas examined within this paper present possible avenues to create good relations for the short, medium and long term. It is critical that ongoing dialogue occurs – for all to participate and be heard – and to maintain the process. This process should be continually monitored to ensure participation and to review the progress as well as the lessons learned that would facilitate further growth.

BIBLIOGRAPHY

Bird, John, Land, Lorraine and MacAdam, Murray eds. *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* (Public Justice Resource Centre, Toronto: Irwin Publishing 2002).

Canada. Department of Indian and Northern Affairs. (2001) First Nations and Northern Statistics Division. DIAND Canada.

Canada. Statistics Canada, (2001). Aboriginal Peoples in Canada. Ottawa: Statistics Canada.

Canada. Statistics Canada, (2001) Housing, Family and Social Statistics. Ottawa: Statistics Canada.

Canada. Statistics Canada, (2001). Juristat, Canadian Centre for Justice Statistics. Ottawa: Statistics Canada.

Canada. Department of the Solicitor General (1998). The Four Circles of Hollow Water, Solicitor General, Canada. Retrieved June 2002 from the World Side Web: http://www.sgc.gc.ca/abor_corrections/publications_e.asp

Canada. Department of the Solicitor General (2001). Mapping the healing Journey - The final report of a First Nations research project on healing in Canadian Aboriginal communities. Solicitor General, Canada. Retrieved November 2002 from the World Side Web: http://www.sgc.gc.ca/abor_corrections/publications_e.asp

Cardinal, H & Hilderbrant, W, (2000) Treaty Elders of Saskatchewan - Our dream is that our peoples will one day be clearly recognized as Nations, University of Calgary, Calgary.

Goulding, Warren. (2001) Just Another Indian: A Serial Killer and Canada's Indifference. Fifth House Ltd., Calgary.

Federation of Saskatchewan Indian Nations. (1999) Strategic Plan for First Nations Corrections, 2000-2004. Saskatoon, Saskatchewan

Federation of Saskatchewan Indian Nations. (2002) FSIN Alter-Natives to Non-Violence Initiative PowerPoint Presentation. Saskatoon, Saskatchewan

Federation of Saskatchewan Indian Nations. (2003) FSIN Alter-Natives to Non-Violence Initiative Report. Saskatoon, Saskatchewan.

Government of Saskatchewan. Department of Finance (2001). Financial Estimates 2000-2003. Regina Saskatchewan: Department of Finance.

Government of Saskatchewan. (2003) Working Together for Safer Communities: Submission to the Commission on First Nations and Metis Peoples and Justice Reform, Saskatchewan Justice, Corrections and Public Safety. Regina.

Report of the Royal Commission on Aboriginal People, Minister of Supply and service Canada, 1996.

Vancouver Sun, Newspaper

SECTION 5:

SUBMISSION TO THE COMMISSION ON FIRST NATIONS AND METIS PEOPLES AND JUSTICE REFORM

KEARNEY F. HEALY

NOVEMBER 15, 2003

The criminal justice system in Saskatchewan is a system transplanted, with very little thought, onto our territory. It's clearly ineffective, especially when one considers the youth (we incarcerate more youth per capita with only negative results). Our circumstance in Saskatchewan requires a unique analysis. The potential to have an effective justice system which the people of Saskatchewan are proud of, is enormous. However to achieve that potential we must vigorously re-examine our assumptions.

It is clear that the real purpose of criminal law is to reduce harmful acts of citizens and organized bodies, against other citizens, and other organized bodies. The prohibition against murder, rape, assault, thefts has stood for thousands of years, in all parts of the globe. Indeed, a community in which members do not directly or indirectly attempt to harm each other is the goal of all.

Looking at youth court in Saskatoon, which is in turn representative of youth courts across the province and in turn they are representative of adult courts, one is struck by an anomaly. If the goal is to reduce, and ultimately eliminate, harmful acts of citizens, one against the other, it is difficult to explain why most offences dealt with in youth court, do not involve harm or potential harm against any personal or organization of citizens. At best they can be described as offences against the criminal justice system. It should cause alarm bells to ring. When offences against persons etc. seem to be dealt with poorly why would a system spend most of its time on offences against itself?

It is often suggested that the most serious offences in Saskatoon that are committed by youth are break and enters into residences. These offences are increasing and the present system cannot stop the increase. A reconfigured system could reduce break and enters annually. However as long as the justice system spends its energy on offences without victims, effective responses are almost impossible to attain.

Youth Court, as it works in Saskatoon, desperately needs reform.That requires changes in the way all the main players do business. No authoritative voice, from beyond the confines of the youth 'culture' is calling for reform. For that reason it seems impossible It is the hope of this paper that you could be that authoritative voice. Indeed you may be the future's best hope.

To understand the problem you must start from where the players in youth court understand their roles. Despite some cynicism, most players believe that they are trying to make a safer community, be fair to the youth and are only dealing with serious offences and/or offenders. The last point may need some elaboration, while no one thinks every offence is 'serious' or that every offender is a 'serious' problem they nevertheless accept that the process that brought this youth or this crime to their attention is evidence that this person is to be treated as 'serious'.

It is the conclusion of this paper that youth court in present day Saskatoon actually works against the humane beliefs of the players. Moreover, with relatively inexpensive changes the abilities and training of youth court players could be dramatically enhanced, making the community safer and being fairer to the youth.

When one analyses the youth court docket for October 2002, one is left with an impression of too many youth appearing in court. Over 827 persons were entered on the youth court docket in October 2002 . The method used was to take each name on, for example, October 1, 2002 as a separate person/entry for that day. If that person came another day, we did not have the resources to note that and instead it was entered as a different person /entry on a different day. There were too many charges (over 2,800 charges were attributed to those 820 persons/entries listed in October, 2002) and few hints as to the causes of so much activity. If we knew what was causing the criminal activity we would have a better idea about how to respond.

A better place to look for causes of youth crime is to look at who is in custody. We know that in Saskatoon, most are Aboriginal, most are poor. We know that very few were in school when arrested and generally they are two years behind in their schooling, according to a study done by Kilburn staff recently.[1] We know from national studies that 75 per cent of youth in Young Offender custody have some form of disability[2], that they

[1] Andy Field then director Kilburn Hall personal conversation with myself
[2] Tough on Kids

have a much higher than normal rate of psychological disorders[3], that they are much more likely to be depressed and that they are much more prone to both suicide and dangerous behaviours than the general youth population[4]. A one-day snapshot in Alberta showed that 50 per cent of youth in custody have previously been in foster care[5].

There is no reason to believe that Saskatoon's youth in custody are not at least as damaged as the national average and may be more so.[6]

The conclusion that seems inescapable is that youth in custody in Saskatoon are living desperately unsuccessful lives.

Keeping the image of desperately unsuccessful youth in mind an examination of the October docket shows a strange pattern. If the image of the youth players is correct, that we deal with serious offenders with serious offences, then how can we explain that about half of all the charges in youth court are offences which do not involve private citizens at all. Of 2,829 charges, between 1,254 and 1,493 can be described in this way. They involve simply the relationships between the youth and the justice players; we call these Level 1 offences. Moreover the entire system is arranged - arguably badly arranged - to accommodate these relationship differences. It is expected, and it is part of the job description of each player, that there will be conflict in the relationships.

Some observers have called these offences 'system generated' offences. Some have called them 'lifestyle' offences. Others refer to them as 'lace curtain' or the 'church lady' offences. Other researchers have referred to them as 'status' offences. However they are described, they constitute over half of all the charges heard in youth court. This represents between 1,254 and 1,493, depending on criteria used, out of 2,829 charges. Over half of the persons/entries in youth court in October had at least one of these charges. We call these lifestyle Level I offences. Indeed, in October 2002 there were a total of 827 persons/daily entries. Of these, 178, were charged only with Level 1 offences. That's 21.5 per cent of all persons/entries in youth court. And as well as being the dominant charge in Youth Court, it also seems to dominate the question of who is remanded for a show cause (bail) hearing.

It is easy to underestimate how important this is. First of all, the facile response is that these charges are the result of a youth 'getting a break'. For example, they could be in jail but instead they are let out and in return they should keep their conditions. The charges, which are called Level I in this paper, are mostly breaches of conditions, conditions imposed as an alternative to custody, as mentioned. So the image is thrown up of a mercy extended which is scorned by a youth who breaks their promises.

However, this facile response assumes too much. First of all it assumes that criminal law owes its first allegiance to itself. Take the example of a youth who did many break and enters, is caught, and then released on conditions including a curfew. If the youth then quits committing break and enters but continues to stay out past his curfew, for reasons having nothing to do with criminal activity, has the criminal law system succeeded or failed? If the youth has been convinced by the criminal law system not to do break and enters, perhaps because other people are harmed, a fact not totally understood before by the youth, then the system has succeeded to meet its objective, to make the community safer.

The real situation, though, is that the youth who is out after his/her curfew, is considered a failure for that reason alone. This is an example of a system putting itself first. If the same youth is returned to custody because of his breach he may go through another attitude change. He may decide that his true allegiance is to the other youth who show him friendship and kindness in custody. He may decide to recommence break and enters with his new friends. He may even decide to do them before his curfew. Clearly this is a failure, however if he keeps his curfew and is not caught for subsequent break and enters then this is thought to be a success for the criminal justice system.

---

[3] Ibid
[4] Ibid
[5] Ibid
[6] See Carol Laprairie, Aboriginal over-representation of the Criminal Justice System: A Tale of Nine Cities

The simplistic response makes another erroneous assumption: that putting a youth in custody is a response that is consistent with its responsibility to the general community to reduce crime. The argument is that a youth in custody cannot do such things as break and enters. True enough. But custody/jail tends to increase crime rather than decrease it, this being true across the Western world. Moreover, within Saskatchewan's unique circumstances, custody tends to encourage youth to organize their harmful acts. Finally, harmful acts continue while in custody. Once it is examined, one realizes that putting youth in custody as a general response to crime is contrary to the purpose of criminal law which is to reduce harmful acts by one citizen against another citizen.

Finally the facile response assumes custody/jail as being resource neutral. A "what else are you going to do?" attitude takes over. Considering the tremendous expense of this option it is important to remember that there may be alternatives to custody that are equally or even more effective than custody. The "what else are you going to do?" attitude when considering jail is often a close cousin to "the ashtrays are full better get a new car" attitude.

The question must be asked. Does this make any sense? Is this the only way?

Since these offences do not involve private citizens or even private corporate bodies as victims, then clearly a democratic society has only one interest. How to deal with youth charged with these offences in a way that discourages any harm to private persons is the question. What is required is a way that deals with youth fairly, especially those marginalized by race, disability, poverty, homelessness or frequent moving, being orphaned, often depressed or suicidal, failing at school, often suffering from mental disorders.

If the economic resources that go into Level 1 offences are spent in a more rational manner, that change in itself would create a more effective justice system.

Taking another look at the October 2002 youth docket, one sees that of the offences against persons in the community, more than half of what's remaining are entirely economic crimes. We call these Level 2 offences. That is to say, that either the private citizen or business suffered an economic loss, for example, damage to their property, or there was the potential for loss. For example a shoplifter stopped outside the door of the store, or a person was found with break and enter tools. Others call break and enters economic offences. For example, the Province of Saskatchewan in *About Youth Crime and Youth Court (1997) YOP-2 03/97* stated at page 2 A "the most common property offences committed in Saskatchewan are theft under $1,000 and break and enter." That may be correct, However with some hesitation we considered break and enters to dwellings a Level 2(b) offence.

If we are to treat these Level 2 crimes as serious, then we should be focussed on restitution to the victims. If we want to treat the youth, with all their disadvantages, fairly, then we would want to have them make restitution and to help them become more successful in the community. If we are to protect the community then we need to show the youth that both the youth and the community have the same interests; a community where all succeed and all live well.

Together the 'lifestyle' or Level 1 offences and the 'economic' or Level 2 offences are about 80 per cent of the October 2002 docket. Of what's left, most are crimes which by their definition involve either no physical harm to a person or minor physical harm to the victim. These include assaults, threats, possession of weapons. These we designate Level 2b and 3 offences.

To deal with community safety, youth need to know that the violence, even threatened violence has negative implications in the general community. To be successful in the general community the use of non-violent techniques is essential. Indeed, in almost every field of human relationships violent techniques are being unmasked and lead to resistance when used. Whether racial epitaphs, or sexist sneers, or mocking the disabled, what was once acceptable is now a recipe for losing influence. Barbara Coloroso, the world famous parenting and anti-bullying expert stated that when one looks at youth who bully, one notices the complete lack of ability to flirt with other youth. To be fair to the youth, there is an obvious need to learn how to be in the community, to strive for success, and to attract support rather than creating antagonism.

Looking at the extremely crowded October 2002 docket, one notices that 'lifestyle' or Level 1 offences, 'economic' or Level 2 offences, and minor assault or threats or Level 3, make up 94 per cent of the docket. What about the 6 per cent left?

Of what remains, the next most dominant type of offence is where there may or may not be actual harm but where the charge implies a level of dangerousness. We designate these as Level 4 offences. For example an assault with a weapon charge normally means a youth has picked up a weapon, a stick, a knife, or a bat, and threatened to hit someone with it. It doesn't mean the youth actually hit them and if that is the case then all prosecutors and judges in Saskatoon that I'm aware of, reduce this charge to a threat or a common assault. Nor, if there is contact, does the charge tell us if it is more than trifling contact. For example a robbery with violence in Saskatoon has included this actual scenario. A youth, the victim, is holding a drink. Another youth, the offender, asks for a sip. The victim agrees but then decides the offender is taking too big of a sip. The victim demands the drink back, the offender refuses and pushes the victim's hands away from the drink. Therefore, robbery, using physical force, without consent, in the taking of, or in this case keeping property.

On the other hand, a robbery can be a real violation. It can also typically involve a group of teenagers surrounding another youth and using force or fear to take an article of clothing, or a bus pass, or small amounts of money. One cannot tell by the charge whether this charge is more like a minor assault or more like a serious assault.

These charges and the ones rated more serious and designated as Level 5, Level 6 - Escape open custody, 7, and 8 - clearly require more careful study by the trained professionals in Youth Court. Some of these charges can best be dealt with by other agencies who are more successful in changing youth behaviour. Some may have to be monitored more closely by youth court personnel. Some may require youth court constant supervision or even custody. The point is that, these, and more serious charges require Youth Court to seriously consider all options and in some cases to monitor closely the responses. This takes time. The Youth Court in October 2002 in Saskatoon dealt with more than 2,800 charges. More than 2,500 of those charges were either 'lifestyle', 'economic' or 'minor assault' offences. In other words it is these offences and not those more serious offences which youth court is presently set up to deal with. And as it turns out, that makes the problem worse.

Let us assume one hurries through each charge and only takes 10 minutes for each. That works out to 28,000 minutes or 466 hours, or about 110 hours per week. Obviously matters are disposed of much quicker than that, mainly through adjournments, and by treating some charges as less serious. Clearly, youth court needs to be restructured in such a way that they can concentrate their expertise on a few cases each day. This cannot happen unless there is a high degree of confidence in the youth courts that there are methods developed that keep it from being overwhelmed again as it was in 2002 and other years.

Author and Crown Prosecutor Rupert Ross explained this reality:

> Everything that we don't like in society gets funnelled into the process that ultimately is set to handle [convicted murderer and serial rapist] Paul Bernardo. We put moose hunters who shoot out of season into that process, drunk drivers, schoolyard fights, all into a process that is ultimately geared to deal with the most dangerous offenders. And when you're dealing with those offenders - people who, for whatever reason, are unable or unwilling to live within society's norms, who are just too dangerous to have on the streets - then we need a process with all of the protections that we presently have in it, because we're saying that the state wants to take away your liberty and for a very long time. And then we need all those processes, those rights, all those protections. And we need the adversariality of it, because it is adversarial. My worry is that, by funnelling absolutely every thing into it, we are creating adversarial approaches and antagonisms and angers and alienations in situations where they may be the problem, and we may be adding to the very thing that we're trying to cure. *(see also John Crawford - Just Another Indian, Warren Goulding, Fifth House Publishing 2001)*

The problem isn't simply a problem restricted to Youth Court. The problem begins with the arrest or laying the charges. Since 50 per cent of charges are 'lifestyle' charges, clearly this takes an inordinate toll on resources. The process involves youth workers submitting breaches, then the Crown reviewing it, the warrant being typed, the police report generated, the police arresting the youth, taking the youth to the police station, presumably pictures and prints taken, parents notified, transport to Kilburn Hall, where the youth must be stripped and searched and processed. The youth is then held there until a morning when the youth can be transported to court, again searched, held until the matter comes before the court, often remanded for show cause hearing the next day. Interviewed by Legal Aid, perhaps parents again notified, transported back to Kilburn Hall, again searched, again held until a morning when Youth Court sits, again transported, again searched, again held. The youth is probably interviewed twice more by Legal Aid. The parent has now made two trips to Youth Court causing child care and other problems at home. The Crown and Legal Aid have talked and most likely have agreed to release the youth. If not, then either that day or some subsequent day, when the youth plans are the most solid since the law is that the youth only gets one chance to ask for his release (unless the Crown, after the youth is denied release, agrees to bring it up again, something the Crown almost never does, the assumption being: why should I have to do it twice, the Judge already said your client should stay in custody) the youth's plans are presented in the context of a hearing to a Judge, who then rules whether the youth should be released or not. This is an extremely expensive option both financially and in human resources. If released, the youth must obey conditions which first must be documented then typed into a release document which must then be both stored by the court for easy retrieval and another copy signed by the youth and given to him or her. The conditions are often monitored by other workers. The youth must return to court another day which involves meeting with his or her lawyer and if the youth fails to do that, that will require an adjournment to set a new appointment because the Legal Aid lawyer will have too many files. Indeed, this person will be the lawyer for most of the people on the docket and will be unable to leave the courtroom for very long to do an interview. Normally this process, this enormous amount of work, only a portion of which has been acknowledged in this description, is triggered by such things as a young person not going to school, not coming home on time for curfew, perhaps not doing community service work. The present day response is to have a series of strangers deal with the youth, one after another, arresting officer, identification officer, remand officer, transport officer, booking officer at Kilburn Hall, staff at Kilburn, prosecutor, judge, Legal Aid paralegal, transport officers, intake officers, Legal Aid lawyer, etc. Remembering that these are very unsuccessful children, the question must be asked, is this the only way? Does this make any sense?

The situation is no better when police, perhaps thinking that it is part of their duty to actively search for lifestyle offences, proactively try to stop or engage youth in order to discover 'lifestyle' offences. The arrest, transportation, documenting and contacting the parents can take the arresting officer up to one and a half to two hours according to police officers. One must remember that these are about half of the 2,800 charges heard in youth court in Saskatoon in October 2002.

Would it not make more sense to use an Elder, or someone skilled at making friends with youth? Or someone, or some group of people skilled at getting needed services for youth, some group of people who can take the referral from youth workers or police or JIR workers, or whoever, and can look for the youth. These people could meet the youth on their own turf and reason with that person. They could try to solve some of the problems, develop a relationship, even a friendship. At the risk of repetition, the present system takes enormous resources and leaves unsuccessful youth feeling that their lives are in the hands of people who don't care and where no private citizen has suffered any harm at all. Does this make any sense?

The present system involves custody. The research on custody tells us that it does not tend to decrease crime either in the community or decrease crime committed by the person. In fact custody tends to increase future crime in those who are incarcerated as compared with those who are otherwise similar but do not enter custody facilities. Other research tells us that the more often a youth is in custody the greater the chance that the youth will commit future crimes. Of course, while not researched that I am aware of, it seems common ground that what activity there is in creating gangs in Saskatoon that activity is strongest in youth facilities, where the recruiters have a captive audience, so to speak. It seems that over use of custody can destabilize the communities the youth came from, making these communities more disorganized and therefore vulnerable to harmful acts.

On the other hand, rather than arresting or issuing warrants for youth, a referral to a group of youth-friendly, skillful, mostly, if not all, Aboriginal workers is similar to other programs which has been shown to reduce crime.

The Washington State Institute for Public Policy researchers looked at both effectiveness and cost of justice programs in order to calculate a 'bottom line' analysis. They looked at a wide range of options, for example with youth they examined boot camps, Scared Straight, Q.O.P. (a combination of mentoring and high school graduation incentives), various family therapies, mentoring (including a Big Brothers/Big Sisters study), more probation, less probation, job supports, etc. Essentially, one could divide the 22 successful/unsuccessful youth programs into two 'styles'. The successful seem to make a long-term commitment to positively work with the youth to solve problems and help the youth be successful. The unsuccessful tended to require the youth to go through some negative experience, such as boot camps, Scared Straight programs. The negative experiences actually increased recidivism by 10 per cent (boot camps) and 13 per cent (Scared Straight) respectively. The cost to the system and future victims after accounting for the actual cost of the program itself was about a $3,500 loss per youth per placement in a boot camp and a $24,500 loss per youth for each placement in a Scared Straight program. (All these estimates are in U.S. 2000 dollars).

On the other hand, the Institute found that, a person who could simply co-ordinate already existing services in a community and can skilfully ensure that the appropriate youth can get these services, can reduce crime by 13 per cent and this was found to benefit the community $14,831 in saved costs per person. (Again, costs were in U.S. 2000 dollars and were calculated after the expense of the program was taken into account).

If a team, such as proposed, could divert the youth who are charged with lifestyle offences or Level 1 offences where no private citizen was harmed, and could retain a friendship with the youth, or connect the youth with an appropriate mentor, the Washington State Institutes study showed a 27 per cent decrease in crime. This would mean giving a benefit, after paying all costs, of $27,000 per person advantage to the community and to the justice system.

As a point of comparison, earlier we reported that in October 2002, 178 persons/daily entries, out of 827 persons/daily entries, were persons charged only with Level 1 lifestyle offences lifestyle. Many of these people came to court more than once in October. We didn't have the time to check that. But assume that each person charged with *only* a Level 1 offence - a lifestyle offence, where there is no private person as a victim - went to youth court twice in October.

Assume that our community (Saskatoon) wished to take advantage of the two programs just mentioned, for example, ensuring that youth get the appropriate services already in the community, and developing a connection or establishing an appropriate mentorship program for the youth. The first program seemed to have reduced crime by 13 per cent, the second by 27 per cent making a total of 40 per cent.

Assume that we want our new team of youth-friendly Elders and workers to both negotiate and advocate for the services that the youth requires, services which already exist in the community. And we would wish our youth-friendly team to have the time to either befriend the youth or set up an appropriate mentor for the youth, of course maintaining contact to ensure that the mentorship is a success. Although these are two different processes let's assume that we only get the benefit out of one and so we'll only calculate the bottom line payback from the mentorship program.

The Washington State research tells that we could expect 'a bottom line' payback of $27,000 per participant. Although there were 178 names/entries (whose only offences were Level 1 offences) listed in October we already assumed that on the average each real person went twice to Youth Court in October, therefore 178 entries should be halved. That makes 89 persons.

Let's also assume, for the sake of caution, that we will use Canadian dollars at par with American dollars. For even greater caution let's also assume that not only wouldn't we get the benefit of the ensuring and advocating for already existing services for youth who need them (the Institute expected that value was $14,831.00 per participant in order to reduce crime by approximately 14 per cent). Furthermore, let's assume that Saskatchewan would only receive half the benefit as laid out for the appropriate diversion/mentorship program that our youth-friendly team would set up. That program was found to reduce crime by about 27 per cent and would expect to have a bottom line benefit of $27,212.00 per participant.

In only one month, using Washington State Institute for public policies research only as indicators and using it very cautiously and assuming that we would only get the benefit from Level 1 offences, the bottom line benefit is approximately $1,200,000.00. That is 89 persons x $13,600 per person.

The saving/bottom line benefit in *only one month* is enough money to hire staff for a team of five on duty seven days per week, 24 hours per day ready to respond to any police who find a youth charged with a lifestyle only offence. This assumes an annual salary of $50,000 per year including benefits, etc. That means one could hire 24 workers, at 40 hours per week or a total of 960 hours per week. There are 168 hours per week and if there are five workers working every hour that equals 930 hours. If each of the 24 workers befriended only three persons per month - charged with only a Level 1 offence - then they would probably be making friends with many people who probably don't need that much help.

However, it is not necessary that that same team should deal only with those who have a Level 1 offence. It would make just as much sense to have that team respond to all Level 2 offences as well. Remember, Level 2 offences are strictly economic loss, or potential for economic loss. Out of 837 persons/daily entries in Saskatoon Youth Court in October 2002, 437 persons/daily entries were entirely lifestyle, Level 1, strictly economic loss or potential loss, Level 2, or a combination of the two. That equals 52.2 per cent of all persons/daily entries in October 2002 Youth Court.

Using the same calculations as earlier desribed, assuming no benefit from the co-ordination of services, treating U.S. dollars as equivalent to Canadian dollars, assuming all persons in these categories came to court twice, and that we would only get half the benefits calculated by the Washington State Institute for establishing an appropriate mentorship, then we would deal with 218 persons and would benefit by $13,500 per person. That's over $2.9 million per month and one month only savings pays 59 workers. Only Level 1 charges would allow for 23 workers. That allows for a staff of 12.5 persons per hour 24 hours a day, seven days a week.

Since the chief need of a victim in a Level 2 offence, strictly economic, is to recover any loss or to make good any damage, then the resulting savings could easily be set up to enhance a program like Youth Works in Saskatoon. The Youth Works program finds paid employment for youth. In that program half the wages go to the victim, one-quarter to the youth and one-quarter to pay for the program. It is submitted by this paper that that program should be dramatically enhanced so that every economic loss is covered by that program and that the ratio should change to half the wages for the youth, one-third to the victim and one-sixth to the program. Accordingly, since the staff is available to respond to calls immediately, one could ensure that the victim is satisfied that preparations are being made to ensure their full financial recovery. They will appreciate the fact that it will be reasonably soon, and that they could receive an apology after the youth has received some counselling from our youth-friendly team. At the present time the system is extremely slow, victims rarely get restitution, and the youth rarely apologizes.

If one gave our youth-friendly Elders and workers the responsibility for common assault and minor offences of violence such as common assaults (Level 3) and a break and enter to a dwelling house/level 2(b), one could expect a return rich enough to have a staff of about 85 workers or 18 persons per hour, remembering, of course, this is paid for out of the benefits accrued from only one month's savings or benefits, making the other 11 months free.

Of course, we expect that such economic analyses will receive much resistance and even ridicule. However, as mentioned before, this paper's argument is that you were in a once in a lifetime historic position. Early incarceration, which is a highly favoured response presently, is not only expensive but produces crime. The techniques that we have suggested actually reduce crime. We submit that there is more than enough money being spent already in the youth criminal justice system to make these programs very real. Obviously much of what we are suggesting could be done by youth workers, custodial workers, and other workers whose main job now is to simply process these charges with no hope of making life better for the victim, the youth or the community.

In the 1990s, the Crime Prevention Council of Canada estimated the cost of crime to Canadians at $46 million per year. *(September 1996 National Crime Prevention Council economic analysis committee Money Well Spent: Investing in Preventing Crime at page 14)* Let's assume that crime has not become more expensive in the last six years. Let's assume that Saskatoon's crime rate is average; it isn't, it's higher. Let's also assume one-quarter of all crime can be attributed to youth. Let's assume Saskatoon's population is 200,000 people and Canada's population is 30,000,000. That means roughly one out of every 150 people in Canada live in Saskatoon. Therefore it is reasonable to assume that the cost of crime itself in Saskatoon equals $46 million divided by 150 or $306,666,666 per year. If in order to calculate the costs of the youth, and they are one-quarter of that, then that cost is $76,666,666 per year for youth in Saskatoon. Clearly if we are to trust the analyses of the Crime Prevention Council of Canada the benefits of reduction of crime must be enormous.

No doubt there will be an objection that the Crime Prevention Council of Canada estimates, the Washington State Institute for public policy estimates, and the other volumes of research that come to more or less the same conclusion are all second rate. Or perhaps it could be argued that they are first rate analysts, however Saskatchewan is very different from the rest of Canada and North America.

When the actual situation is examined closely we find that Saskatchewan is not dramatically different than other provinces in Canada. Indeed, it is very similar to all other provinces, in terms of youth crime, in serious offences. Where Saskatchewan goes right off the map and becomes a much harsher sentencing regime is when we get to Level 1 offences which are lifestyle offences. *(Interprovincial Variation in Youth C Court - Canadian Journal of Criminology)* So those who suggest that Saskatchewan youth crime is different than other provinces must anchor their arguments in the greater use in Saskatchewan, of arresting youth for lifestyle offences. The other two offences for which we are somewhat higher than most other provinces, break and enter into residences and car thefts, are eminently solvable crimes using our youth friendly and Elder led approach.

No one in Saskatchewan, that we know of, has bothered to find out how much it costs to have a simple breach initiated by a youth worker and followed the cost of the process through the entire system. It's not simply good enough to be told that there are already people doing these jobs and therefore we cannot assume that there will be savings in reducing these workloads because that means layoffs. This paper is not urging layoffs of workers but a change in how they do the job. To argue that the people who are presently hired by the Province of Saskatchewan to initiate the processes needed to shift resources, are incapable of doing the same, a clearly untrue statement, then is to admit that the most cynical offender is correct when he states that the entire criminal justice system is set up only to provide job security, and good jobs, for people to oppress them. In essence, to suggest that we are unable to change and therefore must rely on oppression which results in greater crime rates, greater victimization, ever growing public cost, broken lives among disabled, the Aboriginal, the poor, and greater alienation in our community is to cover ourselves in moral bankruptcy. Winston Churchill considered jails a blight upon the honour of a civilization. Saskatchewan will have shown him to be correct. However, we need not assume any such gloomy analyses, we are clearly intelligent enough to reconfigure our resources in a more rational way.

One of our recommendations is that all Level 1, 2, and 3 offences should eventually be primarily the responsibility of our youth friendly elder-lead team. If that is done, approximately 77 per cent of all charges which once went to Youth Court will no longer go there; at least not in the first instance. Rather than an average of 37.5 persons per day in Youth Court in October of 2002, there would be an average of 8.6 persons, unless of course we use a previous caution, that is, each person/entry came twice each month to Youth Court in which case we can expect 4.3 persons per day in Youth Court.

Youth Court in Saskatoon is scheduled to sit from 9:30 to 12:00 Monday to Friday. That's 12.8 hours per week or 2.8 hours per day. At 37.5 persons per day, that's four minutes a person. Clearly that is unacceptable but can become normal unless there is a change.

An examination of a portion of the October 2002 docket (October 1 - October 15) shows that there were 58 show cause (bail) hearings during that time for an average of 5.8 show cause hearings each day. If one was to remove all the show cause hearings that dealt only with persons who had only a Level 1, 2 or 3 offence, which were 36 show causes out of the total of 58 show causes, there would be an average of 2.2 show cause hearings per day. However, even that number is an over-estimate. Five of the remaining were escapes from open custody. While they are listed as show cause hearings, they actually are normally sentencings in Saskatoon. Accordingly, one would only expect 1.7 show cause hearings per day in Youth Court in Saskatoon.

The point, of course, is that Youth Court personnel with such low numbers can take a very close personal friendly, considered approach to youth that comes before Youth Court. With numbers like these, then one could expect that the use of circles would be the norm rather than the rare exception.

At present, normally Youth Court in Saskatoon is crowded with well over 100 people, youth, friends and relatives from 9:20 a.m. to about 10:30 a.m. This big a crowd, in one room, appears suspiciously like a signal to the youth that criminal activity is far from being unusual. It is submitted that this big of a crowd suggests that criminal activity is quite an acceptable pattern.

A final note, on using this system rather than the traditional system with respect to 'lifestyle' offences. The majority of persons involved in the youth criminal justice system know that the youth we consistently deal with come from extremely difficult backgrounds. Most workers in the criminal youth justice system are extremely decent and humane and are very willing to take those circumstances into account. The problem today, however, is that the system is so rigid and is so 'sharp-toothed' on defining a 'lifestyle' offence as a serious offence that no one participant has much of a chance of changing the group dynamic. Although there is no way it can be calculated and is very difficult to quantify, I would suggest that another dangerous result of this situation, besides what has been previously described, is its effect on the workers themselves. The workers are constantly being asked to respond to difficult circumstances, painful circumstances, indeed circumstances of gross injustice and are being encouraged to overlook the difficulties, overlook the injustice, and to continue processing a child or youth. I would estimate that most workers have become involved in this youth criminal justice system in order to help youth. They know coming in that children are shaped by adults but the effect of not being able to help and to be expected to ignore these terrible injustices is to encourage the opposite result. I think that people find Youth Court very difficult and find the entire youth justice profession very difficult because the system effectively encourages cruelty. It suggests that these terrible problems do not need to be resolved and that these relatively minor problems take precedence. For example, it is not unusual to hear people, usually strangers to the youth, complain about the lack of 'teeth' in Youth Court orders. Clearly, they think a little ripped flesh will straighten everything out. Rarely do we hear youth justice professionals express righteous outrage at such obviously ill-informed and even harmful statements. However it is a tribute to all of the workers that they actively resist the temptation of thinking that way in their own personal work. On the other hand, it is a condemnation of the present day system that something that so clearly encourages future crime, is clearly very expensive, is clearly time consuming and frustrating, has not been replaced, nor does it seem that it is likely to be replaced, unless somebody comes forward and demands change.

Over eleven years ago, in January 1992, Judge Patricia Linn reported to the Saskatchewan Legislature on issues of justice relating to Aboriginal people. The recommendation with respect to youth stated:

> The Committee is concerned about the number of youth who are subject to the criminal justice process and build up lengthy criminal records due to 'system-generated' charges such as failure to appear or breach of a *Young Offender Act* disposition. Recent national data indicate that approximately a third of all youth recidivists are charged with system offences, and that 46 per cent of those charges relate to failure to comply with a young offenders disposition. Such charges may reflect a transient home life, lack of parental guidance, lack of transportation or lack of access to a phone. Initiatives to develop better supports for Aboriginal youth involved with the criminal justice system might lessen the recurrence of these problems.
>
> We believe that such suggestions for change in services to young aboriginal offenders deserve to be fully reviewed in an integrated fashion taking into account fiscal and operational issues, to develop a progressive strategy by dealing with aboriginal youth in conflict with the law.

What is being argued in this document is precisely what is recommended by Judge Linn. Indeed, the situation has worsened since Judge Linn's report, now more than 50 per cent of all persons charged in Youth Court have system generated offences included in their charges. Judge Linn reported that "...approximately one-third of all youth recidivists are charged with system generated offences..." Using her definition, in October 2002, 52.8 per cent of all offenders, whether first-timers or recidivists, have system generated offences. Using the definition that this paper chose the number is 63.3 per cent. The difference between Judge Linn's calculations and this paper's calculation is mostly due to this paper defining such offences as possession of marijuana, giving a false name to police and other offences as lifestyle offences. Regarding giving a false name to a police officer, originally that offence was defended as one necessary in order to make sure the police did not waste their time. Consider the following actual case of R. v. B.D.S. The police report reads" "...the writer immediately recognized him as B.D.S. and was aware that there were outstanding warrants for his arrest for criminal charges and when I asked B.D.S. what his name was, B.D.S. provided the false name of B.R. to police at that time. B.D.S. was immediately arrested on the outstanding warrants and for obstruction." Clearly, rather than a shield this has now become a sword in order to add charges.

The root problem is that system players are afraid to say these breaches are not serious charges even though they do not include any harm to any private citizen or private body. The explanation for this behaviour is perhaps the belief that the reason that one takes these charges serious is to engender respect for the law. While that makes a lot of sense for middle-class people, they do and they should have respect for the law because the law treats them fairly, the same concept has no relevance to those who have been marginalized. The law is representative of a system both legal and non-legal that has, indeed, marginalized them. Accordingly, respect for the law must resemble for the marginalized what it resembles for the middle-class. That is to say, a system that ensures that they themselves will be treated fairly and included in the community rather than excluded. Those who suggest that system generated offences or lifestyle offences, need to be enforced in order to develop respect for the law are actually not talking about respect and mutuality but are talking about fear. Once again, to state the obvious, they are mistaking respect for the law for fear of the law. It is true that when a person has been sufficiently marginalized whether by disability or lack of education or race, that that person tends to have little respect for that process that has excluded him. It is also true that the process that leads to a feeling of being excluded and marginalized can be so intense, can be so extreme, that the amount of pain suffered by the person excluded or marginalized is already much greater than any that the law can provide. Accordingly, one should not be surprised that a marginalized person is not particularly frightened of going to jail, which is populated by other persons who are also marginalized. Indeed, it should not surprise the middle-class, when the case is made clear, that when justice professionals say we treat breaches of sentences and conditions every bit as seriously as violence that the marginalized use the same concepts and say to each other the justice system doesn't think that violence is any bigger deal than breaches of conditions. Accordingly, once the middle-class becomes aware of that dynamic, it should not be surprising to them that marginalized people would rather suffer violence than contact the police. On an extremely gross level, it's not uncommon for persons to tell us that although they witnessed violence, the violent person told them not to phone the police because the police are more likely to arrest them for breaches than the offender for the violence. On a somewhat more subtle level, the result of the justice system treating curfew breaches as significant 'serious' offences is that there is a greater commonality between the violent and the victim than there is between the victim and the justice system. Accordingly, once the middle-class becomes aware of it, it should not surprise them that they have abandoned the moral high ground.

Your commission has the, perhaps once in a lifetime opportunity, to unmask the extreme foolishness of the present day system.

RECOMMENDATION:

1) We recommend that in Saskatoon there immediately be established a youth friendly, Elder led team of largely but not completely, Aboriginal persons who have responsibility for all Level 1, 2, and 3 offences. Their responsibility would be to attempt to ensure that all persons with Level 1 offences are dealt with in such a way that the youth can carry on with their life but the concerns surrounding the consideration of charging with a Level 1 offence have been addressed. Unless the youth refuses to be engaged by the youth friendly team, or unless the youth wishes to go through the ordinary court structure, these allegations should not be considered charges and should be referred instantly to the team. It may not be necessary to hire new staff to look after these positions if youth workers can be redirected from their present duties. Furthermore it is expected that custodial workers will also be less necessary. They too could assist in ensuring that these allegations do not transform into charges.

2) We would also recommend that very quickly our youth friendly, Elder led team should be assisted in taking over all Level 2 economic offences and enhancement of the Youth Works Project program is appropriate. However, that program should be changed so that 50 per cent of the youth's wages goes to the youth, 25 per cent goes to the victim and 25 per cent to the program. In return, youth should be encouraged to maintain that program until all victims including insurance companies are repaid.

Moreover, that program should be given enough money to establish a revolving fund sufficient to allow those who are adversely affected economically by a crime and do not have the resources to repair the damage done, an immediate payment or partial payment. Clearly, a family that relies on one car to care for children needs that car repaired immediately. The repayment of the fund should come from the youth but it would be best if in all cases at least some money should remain owing so that the youth can potentially give the money to the victim along with an apology.

Moreover, it is very important that this program emphasize its ability to improve the conditions for marginalized youth charged with a criminal offence. This should not be downplayed. The question could be asked, "but won't people commit crimes so they can be part of the program"? Rather, it should be a matter of serious study as to how to make it clear to youth how this can assist them in becoming employable. Indeed the program should be funded so that the goal of having youth maintain employment *after* restitution is paid is frequently met.

On Level 3 offences, the youth friendly, Elder led team should be responsible for making sure that any psychological treatment, any family counselling, and any sentencing or healing circle that would be useful is convened.

When this team becomes fully functional, it is submitted that normally all the Level 1, 2 and 3 allegations should be the responsibility of the team and should only come to Youth Court and be transformed into charges in exceptional circumstances.

3) At present, police and prosecutors have the discretion to end charges that they think are too minimal to take to court. It is worth noting that they may withdraw charges or not charge for other reasons as well However, at this moment the Crown Prosecutor's office argues that judges should not have the power to withdraw charges that the judge thinks are clearly too minimal to spend the court's time on. We would recommend that the Crown Prosecutor's office in Saskatchewan immediately and publicly announce to all courts that they accept that the doctrine of de minimus non curat lex, which roughly translates from Latin into: the law does not deal with trifles. Clearly, the law very much deals with trifles in Youth Court in Saskatoon and this is accepted by the Crown Prosecutor's office. While the doctrine should be accepted by the Crown Prosecutor's office, they, of course, have the right to disagree with its application on any particular case. This is especially important in Youth Court as shown by examination of the Youth Court docket in October of 2002.

This would be particularly useful for the cases that still remain in Youth Court after the youth friendly, Elder led team takes over Level 1, 2 and 3 offences. Clearly the judge and the Youth Court professionals will be willing to try new techniques for changing behaviour with a few youths still going to Youth Court. Some of these experiments may be very wise. Some of them may have missed the mark. With the ability of the judges to be able to dismiss matters as being too minimal for the Youth Court to be concerned with, it would allow judges to recognize efforts to meet the goals. A common example might be: "I know you've been trying very hard to go to school every day. And we understand how you can be angry when you were told you nevertheless failed an exam and as a result of your anger you thought it was better to leave the school for the day. We don't think that is an important enough issue for you to be charged with failing to attend school regularly." An actual case involved a young person who was in open custody and was required to go to Main Street in Saskatoon. He, along with other students went across the street to the 7-11, bought a Slurpee and went back to the school. The school teachers, of course, did not want everybody to go over and buy Slurpees at 7-11, so they phoned all the parents. This particular youth was a young offender with the open custody facility and they decided to treat it as an escape lawful custody situation. The police were then called. He was arrested and placed in Kilburn Hall over the weekend. He was held for a show cause hearing from Monday to Tuesday, a show cause hearing was run and the matter was ultimately set down for trial. It did not, ultimately, proceed to trial. Approximately two weeks before the trial date, I was contacted by the Prosecutor's office and told that they did not wish to proceed with that case.

4) We would recommend that there be a body set up much like the Auditor General, the Ombudsman, the Children's Advocate, and the Human Rights Commission, that would be a Commissioner or Peace and Justice in the Aboriginal and Non-Aboriginal communities. We would recommend that that Commission have the right to address the Legislature and the public directly as an independent body and advise the Legislature how the operation of various institutions within the province are affecting the success of our citizens (peace) and how the failure of public institutions and other bodies is affecting crime rates (justice) in our community. Perhaps the commissioner should also have responsibility for the child friendly, Elder led teams. Perhaps not.

5(a) We recommend that with respect to youth, the Crown take publicly the position that they are now willing to re-open show cause hearings at any time that the youth is able to come up with an approved plan. Presently in the Young Offender's Act there are provisions for review of custodial dispositions. We would suggest that those provisions would be a good guide for when the Crown should agree to open a show cause hearing, that previously denied the youth release.

5(b) We recommend that the Crown publicly take the position that all conditions of release may be reviewed by the Youth Court. Young people's lives and the lives of their caretakers change frequently. Conditions should be changed and removed whenever that meets the goal of greater success.

6) We recommend that the province designate 16 as the presumptive age for which a young person may be transferred to adult court.

7) We recommend that the Provincial Attorney General immediately define the phrase serious bodily harm in the Three Strikes You're Out provisions in the Y.C.J.A. and that it be defined in such a way as to underline the government's commitment to only use that provision in extremely rare situations.

8) We recommend that when dealing with youth that all government institutions assume that their first responsibility is to encourage youth to become more effective in dealing with the general community. That's where a youth needs to be.

9) We recommend that there be immediately a commitment to a process that creates 'state-of-the-art' responses to those youth with brain injury of all kinds including as a result of alcohol. That response must include pleasant living conditions and probably a type of sheltered employment.

SECTION 6:

MAGNIFYING HOPE: SHRINKING HOPELESSNESS

SUBMISSION TO
THE COMMISSION ON FIRST NATIONS AND
METIS PEOPLES AND JUSTICE REFORM

SUBMITTED BY
DR. RONNA JEVNE
OCTOBER, 2003

TABLE OF CONTENTS

An act of hope 1
About the author 1
About my approach 1

BACKGROUND QUESTIONS

Why consider hope? 2
Are you open to thinking about hope? 2
Isn't hope just setting goals? 3
What about false hope? 3
What about false despair? 3
How are hope and change related? 4
What in the system is already hopeful? 4
How does hope in other situations compare to hope in the justice system? 4
How are hope and justice related? 5
How can hope be addressed by parties with diverse, if not divergent hopes? 6
What part does the media play in hope and justice? 6
Is it important to think of hope in every instance? 7

CORE QUESTIONS

What are the indicators of hope? 8
Do want incarcerated persons hopeful? 8
What threatens hope? 9
What enhances hope? 9
What about young people? 9
What more do we needs to know? 11
How likely is research on hope to happen through formal channels? 11

NECESSARY UNDERSTANDINGS

Hope is a crucial therapeutic factor. 12
To be hopeful requires a constant vision. 13
Hope is not visible early in the change process. 13
Hope is a complex, multi-dimensional experience. 14
Hope is developmental 15
Hope is an embodied experience. 15
Patterns of hopelessness can be counterbalanced hopeful patterns. 16
Hope can be accessed and enhanced through creative activity 16
Hope is about possibility, not probability. 17

Hope can be inhibited, enhanced and learned. 17
Respect in relationships is key to fostering hope. 18
The personal hope of each justice worker is important. 19

CONSIDERATIONS FOR REFORM

Questions

Key players 20
Current state of hope 20
Future hope 21
The lens of hope. 21

Recommendations

    Taking a hopeful stance 22
    Identifying and magnifying hope 22
    Increasing public awareness. 22
    Introducing hope into training and programming 22
    Influencing young people 23
    Pursuing further understandings. 23

APPENDICES

Youth hope project – J. Fouts 24
Hope and Youth – L. Lemay 26

Let me light my lamp and never debate
whether it will remove all the darkness.
Tagore in Fireflies

AN ACT OF HOPE

To hope is to search. To hope is to notice the gaps between where we are and where we want to be, and to ask of ourselves, "How might the futures we face be more hopeful?" The Commission on First Nations and Metis Peoples and Justice Reform is an act of hope.

ABOUT THE AUTHOR

I am an internationally recognized scholar in the area of hope studies and am co-founder of the only center in the world dedicated to the study and enhancement of hope. The views presented in this document are based on more than two decades of clinical observations while working with persons in contexts of adversity and/or hopelessness, interventions developed for the purpose of influencing hope, and research with persons in situations often associated with hopelessness. A short version of my vitae is attached to this submission.

The views expressed in this document reflect the views of the author and are not public statements of any of the organizations with which I am associated, including but not limited to the University of Alberta, the Hope Foundation of Alberta, and Corrections Canada.

I am not well informed about corporate or large scale organized or gang crime. In this document I see myself commenting on hope more as it relates to the kind of injustices that have motivated this commission.

ABOUT MY APPROACH

You will find this report relatively free of jargon. For years people have entered my office without referring to *human agency, self efficacy* or even less psychological words similar to those I see in correction plans such as *dynamic and static factors*. People talk about surviving, even thriving, because they didn't give up, because they had hope - not because everything turned out the way they wanted. Hope is *their* word and they interpret it very personally, not as some depersonalized reference to goals or expectations. Hope is *not* about naive or excessive optimism. It is *not* solely about achievement. It *is* about not losing sight of the goodness of life even when it is not visible.

I think of hope simply as a small voice in the heart of each of us that yearns to say "yes" to life. If nurtured and strengthened it invites, encourages, pulls, pushes, cajoles, and seduces us to go forward. Whether viewed as a human need, a biological life force, a mental perspective, or an external pull to a transcendent self, hope is capable of changing individual lives. *It enables individuals to envision a future in which they are willing to participate.* We each have something I call the *hoping self*. It is a voice that can give voice to our hopes and dreams. If this voice is silenced or assaulted, hope dies or gets misdirected.

This report is organized primarily around a series of common sense questions. The initial questions provide background to the issues of hope, the core questions address questions related to hope and justice and the third section addresses understandings necessary to consider change in the system. A series of *questions for reflection* and *recommendations* conclude the report. The appendices include two written descriptions of programs using hope with young people.

You will also find minimal referencing of material which would substantiate my viewpoint. The Hope Foundation of Alberta has an extensive Resource Center with hard copy of such material should someone be inclined to want to pursue this knowledge more specifically.

BACKGROUND QUESTIONS

WHY CONSIDER HOPE?

a) Offenders and an unknown percentage of those employed in the justice system are often depleted in terms of hope and welcome the replenishing of it. The future they envision is not a welcoming one.

b) When persons are without hope and without hope for hope, they are more willing to do desperate things.

c) Most professionals enter their work with a belief they will make a difference. Being fair, caring, and promoting coping are often in and of themselves effective ways of doing so. However if the clientele they work with sees no future, they do not respond to the offered supportive interventions. In the absence of reinforcement, staff hope may suffer until their defenses include *not caring, not hoping and not being fair*. Behaviours on their part may become congruent with hopelessness.

d) Hope is a known therapeutic factor. A substantive, solid body of evidence is now available to support the importance of the experience of hope. There is an established benefit to mental, physical and spiritual health.

e) Hope is logically a major factor in lowering recidivism.

f) A body of knowledge related to hope focused practice and intervention is now developing. It is part of a new field referred to as positive psychology.

We have a choice of how to look at situations. We might call the choice we make the lens we use. To choose the lens of hope is to declare potential in the context of what may look hopeless. It is to consider possibility despite probabilities that are not encouraging. Using the lens of hope implores us to understand that things not possible at one time may be possible at another; things that cannot be done by one person may be accomplished by another; things that can't be done one way may be done another way.

ARE YOU OPEN TO THINKING ABOUT HOPE?

As I understand the commission, it is to identify potentially *efficient, effective and financially responsible reforms*. To identify the intentional use of hope as one of those reforms implies a recognition of the value and potential power of hope as an actual intervention. In addressing that potential I believe three things need to be kept in mind, without which this document will fall on blind eyes.

First, without hope, you die. It is that simple. There are many ways to die, but without hope, minimally you die on the inside. Many are taking their own lives. In Alberta, if you are male, over the age of 23 and under 84, you are more likely to die by your own hand than in a car accident. Members of the First Nations are disproportionately represented among those taking their own lives.

Secondly, there is an ethical obligation to be concerned about hope. The human and financial costs of hopelessness are immeasurable. In addition, sufficient understanding about hope now exists that it can be used as an intervention itself. That body of knowledge is magnifying daily and is the focus of a whole new field of research. Not to use hope is, in some way, a withholding of treatment.

Thirdly, we cannot give what we have not got. Our actions are not neutral. Every human communication has the potential to influence hope, positively or negatively. Only those with their own hope well grounded are truly able to acknowledge another's hopelessness without fearing that their own well-being is at risk. When we are afraid of being with people who have high levels of hopelessness we construct personal and institutional structures to protect ourselves from a sense of powerlessness. At the personal level, this threat often manifests itself in the abuse of power, the avoidance of direct contact with offenders, and/or arrogance thinly disguised as expertise. At the institutional level the threat often reveals itself as structural rigidity.

ISN'T HOPE JUST SETTING GOALS?

Hope is a specific phenomenon and although it is related to other concepts, it is indeed different than coping, optimism, expectancy, resilience, faith and other positive constructs. One of the distinguishing features is its 'goodness factor'. One can be resilient or a good coper without being motivated by decency, integrity and social conscience.

As well hopelessness is not synonymous to depression. One can be hopeless and not depressed, depressed and not without hope. This document however is not intended to discern among the hope/hopelessness related concepts.

Hoping is not denying the present situation. It is searching for future possibility in light of the reality of the situation. The kind of hope addressed in this document is a blend of *goal* and *soul*. The goal part is not unrealistic wishing however. The soul part is the internal capacity to keep looking for possibilities in the midst of adversity, whether the adversity is self or socially inflicted or both.

WHAT ABOUT FALSE HOPE?

There is a common concern that if we use the lens of hope we will be encouraging hope where it cannot happen, that we will promote hope by neglecting risks.

No one wants to place the public at risk. The lens of hope allows for what hope theory calls "reality surveillance". In other words it takes into account the facts of a situation. Recent literature in hope studies no longer uses the language of "false hope". Rather it uses the idea of "disputed hope". That is, it recognizes people will have different views about the situation, different hopes and different beliefs about what may be possible. It recognizes the future has not yet arrived and that *sometimes things do turn out better than we might have expected.*

WHAT ABOUT FALSE DESPAIR?

People who have 'false hope' at least looks to the future with hope. People with false despair fail to even look. They are sure the situation has no potential to be different. People with false despair fail to see possibility where it may exist because it is not easily identifiable. They have not learned "possibility thinking". Their view of situations and people is probabilities derived from past, not on possibilities derived from looking to the future with fresh eyes. Although a person may have similarities to a group which was used to develop predications, the group template is indeed never accurate when placed over the individual. False despair is the result of the mental activity of stereotyping.

HOW ARE HOPE AND CHANGE RELATED?

By engaging in the process of this Commission, it is not possible to know which seeds of hope may find fertile ground. It is my experience that hope not uncommonly takes circuitous routes to engender change. If we search for immediate or concrete results, hope may remain hidden for some time as it germinates. Positive change does not occur without hope and hope grows with evidence of positive change, no less so for systems than for individuals. This is my way of saying that a major paradigm shift takes time, yet it must start somewhere.

WHAT IN THE SYSTEM IS ALREADY HOPEFUL?

My task is not to identify those pockets of existing hope already present in the system, those mature individuals whose depth of understanding looks beyond the crime, those programs designed to enhance not only survival but humanness among justice workers, offenders and families of victims of crime. The pockets of hope in the system acknowledge the need and the right for all concerned to be treated as a human, not as an object. Further *understanding those pockets, whether they be policies, persons or programs may be key to enhancing hope in the system.* It is in these pockets of hope that the essential foundations of crafting a different future may lie. Taking note of those pockets is a key task. Such movements as restorative justice are examples of such efforts. It is a worthy task, likely already addressed, to ask, " How might those seeds of hope be expanded?"

HOW DOES HOPE IN OTHER SITUATIONS COMPARE TO HOPE IN THE JUSTICE SYSTEM?

This might seem like an unlikely question but has caught my attention many times. It started in 1992. I was studying hope. On Thursday evening I interviewed breast cancer patients. On Friday morning, female offenders risked talking to me about hope. Their views were so remarkably similar I wrote a common piece and both breast cancer patients and women in remand confirmed their views were accurately expressed in the following:

> **No one is a voluntary inmate here.** They are here for various reasons. Some committed crimes over the years for which they are now paying with their lives. [cancer patients often feel they caused their cancer] Others are confused that they are here. They didn't think anything they were doing was that wrong. Others are here because someone else committed a crime and they were just in the wrong place at the wrong time. Most believed they would never be caught.
>
> **No one here will be granted her individuality.** While they are here they will wear our uniforms, have little control over their choice of food and turn their light out when ordered to. They will urinate on request. They will be asked to consent to invasive, often painful/offensive treatment, sometimes with questionable consent. They will have few or no formal advocates. Efforts to exert influence may be patronized but are rarely effective.
>
> **Every one who works here has power.** They can choose to direct that power with various intents. Some feel a deep sense of mission. Some use it to feed their need for power. Many are doing their jobs because they need work. They potentially have a profound influence on the experience on those held captive. They can make the time tolerable, even transformational or a stay in hell.
>
> **There are differential sentences given here.** A few will get a reprieve. Some will get parole. They will be released and return to us routinely to undergo inquiries about their day to day regimes. At some point, most often around five years they may be granted *their freedom - a clean slate.* Your chances of doing well in the system are better if you are submissive. As many as one third of them will be haunted by their encounter with the system. As many as half of them will be back to spend more time.
>
> **Life on the outside is forever changed.** Outside they will face limitations in their work options, reductions in their liberties, and a good deal of social rejection. They will cease to be invited to dinner

> parties. People will talk with them about anything except what they have been through. A few will feel a need to eventually help those who have just been sentenced. Still fewer will attend to those with life sentences.

I am not sure how meaningful this is for readers without an awareness of the cancer experience. However, assuming the cancer patients and the offenders both told the truth about their experience of feeling held captive, how is that "Cancer can be beaten" evokes national compassion and entices millions to donate time, energy and dollars to lower the frequency and consequences of a condition that claims the life and lifestyles of thousands of Canadians each year. In twenty years the life expectancy of a breast cancer patient has been only minimally enhanced yet slogan after slogan encourages hope.

In contrast, the person who is accused or who has offended is no the target of widespread hope. The concentration of resources are not aimed at eradicating the injustices they experience. Further, if a high percentage of cancer patients were of one culture, a flurry of questions would drive research and interventions. No such evidence of concern is being expressed about the fact that First Nations and Metis people are substantively overrepresented in the prison population in Canada. No such hope is being visibly touted as inevitably successful.

HOW ARE HOPE AND JUSTICE RELATED?

First, the relationship between hope and justice simply has not been studied. A few studies related to the relationship between hope and ethical behavior may be setting the groundwork for such inquiry. One such study has been done by A. Webster who now works for Corrections Canada. To oversimplify his results, he found hope was a substantive factor in enhancing ethical behavior. Rather than studying high risk behavior, he chose to ask the question, "What correlates with behavior that is ethical (behavior that does not put person or society at risk)?"

If we think of hope as an outcome, people can be hoping for different outcomes relative to the commission of a crime. The commission of a crime may even be a misdirected hope or evidence of immature hope. Once sentenced, some would hope that punishment would act as a deterrent, that it will 'solve' the problem. Minimally the hope for retribution is to be fulfilled. When that does not happen victim impact is deepened. In the discussion of criminal justice from the perspective of those being incarcerated, we don't know what their hopes are. We simply do not know. The obvious answer is "to get out" yet as I listen and observe female offenders there are many other hopes that are unfulfilled. A female offender put it bluntly when she said, "Treat us like human beings."

Michael Ignatieff in *The Needs of Strangers* notes

> The administrative good conscience of our time seems to consist in respecting individuals' rights while demeaning them as persons. In the best of our prisons and psychiatric hospitals, for example, inmates are fed, clothed and housed in adequate fashion; the visits of lawyers and relatives are not stopped; the cuffs and clubs are kept in the guardhouse. Those needs which can be specified in rights are more or less respected. Yet every waking hour, inmates may still feel the silent contempt of authority in a glance, gesture or procedure. (p. 12)

On a daily basis offenders are exposed to other offenders and justice workers (from lawyers to guards to those working in the rehabilitative components of the system). We cannot assume that those responsible for confinement and efforts at change , regardless of discipline, are models of humanness. Ignatieff goes on to say "Being human is an accomplishment like playing an instrument. It takes practice. The keys must be mastered. The old scores must be committed to memory. It is a skill we can forget." (p.141) The system in which people work must convey its value of the practice if it is to be honed.

If experiences in the justice system render a person feeling less human, the hopes of society will not be in the foreground upon release. The benefit to everyone of an offender becoming more human seems obvious. To be human is to hope. It has been said that 'hope is to the soul as breath is to the lungs'. The justice system unquestionably has the right and obligation to protect society and to punish through incarceration. It must wrestle with whether it has an obligation to restore and/or repair hope, not only for the benefit of the offender, but for the benefit of society. Towards what hope of society is it willing to direct itself. Is the hope for safety well served if hope is not addressed?

Serving time or attaining freedom does not ensure more humanness."In the end, a theory of human needs has to be premised on some set of choices about what humans need in order to be human: not what they need to be happy or free." (Michael Ignatieff, *The Needs of Strangers*, p. 12)

This perspective on humanness applies when we consider the issues of social justice. The disproportionate representation of offenders from the First Nations populations speaks to conditions of hopelessness that engender crime. Before or at least concurrently to working on hope, the efforts to shrink hopelessness have to be addressed. The insidious erosion of humanness is a major factor in hopelessness. Many of these are cultural and systemic factors. What we do know is that anytime a person or a collective of persons are silenced, one of two things happens. They get angry and/or despairing, both of which are understandable responses to a life situation that has foreclosed on possibility. Seldom does the average person see a face on poverty.

For the average citizen, the person in need is someone else, somewhere else, even if that person/family is just down the street. It is therefore possible for those with some access to fulfilling their hopes to put out of awareness the conditions to which they themselves do not want to succumb. Both the person who is the victim of social injustice and the person who knows, but does not want to acknowledge it, feel powerless. M. Seligman's concept of 'learned helplessness' applies equally to the victim and passive observer of social injustice.

Many people are working from many different perspectives to address issues of social justice? Poverty, drug use, alienation, illiteracy, to name only a few, are highly correlated with crime. Efforts to address them are statements of hope. These often under-funded initiatives can make major differences in the lives of individuals and communities with subsequent reductions in crime.

HOW CAN HOPE BE ADDRESSED BY PARTIES WITH DIVERSE, IF NOT DIVERGENT HOPES?

When diverse groups of people can form a community of concern and can sufficiently agree on hopeful outcomes, people will work together. They may not have identical goals but they share a common hope and are willing to work together on their separate goals. Goals may be a step in fulfilling a hope but do not constitute the hope itself. The question arises, "What do we need to do to align the hopes of different parties?" We would have to know the hopes of each party participating. How might those be identified? How might the common hopeful thread be acknowledged by each invested party rather than be touted as competing visions?

WHAT PART DOES THE MEDIA PLAY IN HOPE AND JUSTICE?

The media plays a hefty role in making hope, hopelessness, justice and injustice visible to the community. We are fed crime and punishment in 45 seconds clips. The offenses of the majority of offenders are not news worthy and we are left to generalize from the minority who receive media coverage about the larger population of offenders. We are often not informed of the contextual/cultural information. The counterbalance is that on occasion, it is the media that brings injustices, including social injustices, to the foreground. Several questions arise. How might the media be an even more central member of a community of concern? What would happen if the media profiled hopeful stories related to justice? How might the average citizen hear about the people who were able to turn their lives around? How might the media draw attention to that potential?

IS IT IMPORTANT TO THINK ABOUT HOPE IN EVERY INSTANCE?

Hope is one of many variables involved in the complex criminal justice system. It's role is going to vary across situations. It would be easy to generate a litany of 'yes, but not with regard to this situation or that person'. The focus of this document is the need to attend to the issue in the obvious contexts where it is an issue, where hopelessness is a contributing factor and/or an outcome of the crime. The less obvious situations where it might play a role or be of benefit if considered could be reviewed later.

CORE QUESTIONS

WHAT ARE THE INDICATORS OF HOPE?

Hopeful people are not passive people. They want to learn, to grow, to see things happen that will create a better future. Hopeful people want more, are willing to work for more and will resist being demeaned, even if they must pay dearly for it. We must think seriously if we label *adaptation* to the injustices and/or indignities of poverty or prison environment as an indicator of hope or health.

Hope is a gatekeeper to help people access their capacities. It might be described as a foundational developmental capacity. Without hope, learning is inhibited, communication is disturbed, behavior is altered. Hope influences our behavior, permitting some actions, inhibiting others. When people anticipate a good future, they try things, they take risks. When people see a future in which they are active participants, they make efforts to make things happen. On the other hand, without hope, they feel at the whim of circumstance and believe they have little to lose. This appears true of adults as well as of children.

Hopeful people achieve more, are happier, have better mental and physical health, including higher energy. They are able to generate possibilities under difficult circumstances and they are able to delay gratification. Hopeful people take risks while respecting the rights and personhood of others.

DO WE WANT INCARCERATED PERSONS HOPEFUL?

If you had hopeful prisoners how would prisons be different and how would it affect the people who maintain order? If more hopelessness than presently exists develops, what is the likely aftermath?

The system could sincerely point to effort suggesting it wants people to be hopeful. On close examination though the template of the offered hope may be perceived as one **we** have for ***their*** lives. Offenders have referred to what they call " an illusion of choice. It isn't *our* correction or release plan it's *theirs*. Our only choice is whether to agree to it." Ignatieff warns us that "There are few presumptions in human relations more dangerous than the idea that one knows what another human being needs better than they do themselves (p.11) ".

We can agree or not agree. However, this speaks to what persons in hope retreats and counseling have said to us over and over. That is, one of the most sought after hopes is to be who we are in our heart of hearts. If we come from a philosophical position that most offenders are 'bad' people, we would not want them to be who they are. If however we believe that behavior is not synonymous to personhood, we could assume they too would like a future in which they actually chose and that they may have insight into their own needs.

On the surface this philosophy may seem radical. In practice it is not. It is simply the absence of coercion, however well meaning and the respect for individual needs. Years of working with persons with low hope have demonstrated to us that these people are not without understandings of their own hope and their own needs. They are weary of everyone having an idea about how they have to be different. They are also quite amazingly resistant to change when it is imposed.

Hopeful people have something to lose. To lose one's future is a terrible price to pay for behaviour. To lose one's identity is a greater loss.

WHAT THREATENS HOPE?

Kay Herth in a chapter being published soon in an *Anthology of Hope* lists threats to the hope of ill persons. Extrapolating from her work we might consider the validity of the threats to hope for persons accused of or convicted of crime:

- Hopelessness in others
- Depleted energy (fatigue)
- Isolation (physical and/or emotional)
- Poorly controlled symptom management
- Concurrent losses
- Spiritual distress (lack of meaning)
- Devaluation of personhood
- Abandonment and isolation
- Lack of information

It does not take sophisticated training to examine that list and conclude that social injustice, and incarceration potentially influence hope negatively. This list generates a series of reflections.

Hopelessness in others

Who in this person's world has any hope for them?

Depleted energy (fatigue)

How physically active is this person? In the justice system, one rarely sees the quickness of step that suggests this person is getting on with their life. The need to have controlled movement reaches a point where normal body function is suppressed increasing the likelihood of depression.

Isolation (physical and/or emotional) Abandonment and isolation

How isolated was this person before the commission of the crime and during incarceration?

Isolation/loneliness is *thee* highest correlate of hopelessness. In light of that correlation, how might the experiences involved in being arrested, sentenced and serving time influence isolation?

Joan Martel's study "Solitude and Cold Storage: Women's Journeys of Endurance in Segregation" draws attention to the experience of segregation for women. She describes segregation as a *taken-for-granted experience of indignity, forced boredom and forced isolation.* How might this *ritual of deprivation* be reviewed in light of hope while respecting the need for a 'safe' alternative during times of threat to self or others.

Poorly controlled symptom management

Depression, anxiety and anger are common occurrences in persons struggling to hang on to hope. How accurately are these symptoms diagnosed? Beyond present efforts, how can mental health issues be identified and addressed as part of crime and relapse prevention? Obviously anger is an unwelcome behavior in the best of situations. Many contexts of the justice system generate intense feelings yet consciously or accidentally require suppression of them. It was Thomas Aquinas who suggested that the sisters of hope are love and faith, but the daughters of hope were anger and courage. The person who has anger still has hope. How might that be used to everyone's advantage?

Concurrent losses

Concurrent losses are the norm. In many cases, prior to the commission of a crime, a person may already have experienced multiple losses. In prison the losses are magnified. Hopelessness is a sense of the loss of one's future. Hope plays a huge part in grief counselling and healthy reengagement in life.

Spiritual distress (lack of meaning)

The challenge of finding meaning in a prison culture is like looking for sunlight in a coal mine. There are a few lamps pointing a direction. Forced boredom results even when programs or internal work are available. Most offenders are not skilled at creating meaning internally although remarkably some develop the capacity.

Devaluation of personhood

Likely the commission has heard many accounts of the devaluation of personhood. Devaluing someone as a person constitutes what we might call 'moral injustice'.

WHAT ENHANCES HOPE?

Uplifting memories
Positive relationships
Meaning
Goals and aims
Spiritual practices
Cognitive strategies
Refocused time
Lightheartedness
Hope objects
Hope rituals

In examining these briefly it is not too hard to see that social injustice, a life of crime and an experience of incarceration are not likely to be particularly hope enhancing. If hope is to be rekindled there must be opportunities to draw from past good memories (which may be minimal), to create new ones, to develop healthy relationships, to explore the potential for meaning, to set goals and pathways for achieving them, to develop one's spirituality and to examine one's belief system. Within the justice system there are some opportunities for doing so. One of the challenges is that it takes hope to engage in the programs that are designed to address these issues.

It is also important to acknowledge that we know very little about the hope of persons accused of crime or incarcerated because of crime. Without further information about the nature of their hope including it's source and the outcomes for which they hope, the system is limited in accurately targeting that which would enhance hope.

WHAT ABOUT YOUNG PEOPLE?

In my view one of the most promising areas of the application of what we know about hope is with youth. The Hope Foundation of Alberta has been working with youth, teachers and schools. Two people very active in this work have been so kind as to write brief reports on their hope work with youth which I have included in this document. Young people are more than capable of turning their lives around. Curriculum has now been developed to assist teachers with these programs. We have a good deal more to learn about youth and hope but have learned enough to see it as a very promising area. Rick Snyder of the University of Kansas has conducted numerous studies in the area of hope and youth providing substantial evidence of the value of hope to young people.

Imagine if every child had learned the skill of getting up, brushing their teeth and brushing their hope daily? That's the goal. Young people are drawn to goodness. They will work towards it. They hunger for meaning and connection. And they learn hope more quickly than adults. How might hope be introduced more systematically with youth at risk for crime? How might hope be introduced more systematically with youth who have offended?

WHAT MORE DO WE NEED TO KNOW?

Every report written by an academic probably includes, "This needs to be researched." Well, *this does need to be researched.* We presently do not know

- The levels of hope and hopelessness in persons at risk for the commission of a crime
- The levels of hope and hopelessness of those who are incarcerated and how those levels vary with offences, sentences, gender, culture and so forth
- The levels of hope and hopelessness of persons responsible for offenders and how those levels vary with their tasks within the system, their education, their gender, their personal beliefs and so forth
- The influence of incarceration on hope and hopelessness
- The trajectory of hope in the first few months following release
- The influence on entrance into and completion of programming depending on the levels of hope and hopelessness (One study "Hope as predictor of entering substance abuse treatment" in Addictive Behaviors 28 (2003) 13-28 is the only study that has looked at this.) Increased levels of hope were associated with a lower probability of entering into treatment. Higher hope though is related to successful treatment completion. It is also noted in that article that high hope persons may be much better at generating effective alternative strategies.
- The influence of various programs on the experience of hope
- The influence of various factors on hope for example, spirituality, a hopeful person in their lives, addictive substances…the list is endless

HOW LIKELY IS RESEARCH ON HOPE TO HAPPEN THROUGH FORMAL CHANNELS?

For hope research to be taken seriously the role of hope and hopelessness in criminal behavior and rehabilitation would have to be taken seriously. A research proposal submitted to Corrections Canada was recently returned with comments which included, "I don't really understand why the researcher thinks 'hope' is a powerful construct in corrections" and "I think the researcher is going to find that participants have trouble understanding what is meant by 'hope'." (Just for clarification, I was not the researcher to whom I refer).

These statements speak volumes. First, of the lack of awareness of the power of hope and of hopelessness and secondly, the judgment that incarcerated women would not be able to speak to the issue of hope. Let me assure you that the only people who say "what is your operational definition of hope?" are people with lots of letters behind their names. Ask a cancer patient, an impoverished mother, a person in prison and they have NO difficulty speaking about hope.

To understand the human condition it is necessary to access people's feelings and thoughts. This is a particular expertise and is not dependent on large numbers of people in a study nor on statistical measures. If this kind of study is to be done, people with expertise in reviewing the proposals for studies of this nature must be on the review committees. Only multiple approaches to understanding hope and hopelessness will ensure the depth of knowledge necessary to address the complexity of the struggles of the justice system and those who live and work within it. Limiting the kind of research done will limit the kind of knowledge gained.

NECESSARY UNDERSTANDINGS

AS YOU MAKE SUGGESTIONS AND RECOMMENDATIONS, WHAT DO YOU NEED TO KNOW AND UNDERSTAND ABOUT HOPE?

1. Hope is a crucial therapeutic factor.

The jury is in. There is no longer any serious question that hope is a positive therapeutic factor. *Hope work*, as this kind of intervention is now being called, is based on an assumption that hope is a critical factor in recovery from and adjustment to many difficult life circumstances. Hope is capable of changing lives. Having hope enables people to envision a future in which they are potentially active participants. Research is also confirming the importance of the helper's hope in treatment. For example, J. Talley (1992) reports in *The Predictors of Successful Very Brief Psychotherapy* (for anxiety and depression) that the most unexpected finding was that the single item that best predicted satisfaction with treatment was, "the counsellor encouraged me to believe that I could improve my situation, and this item accounted for 68% of the variance." One might interpret this as the client reclaiming hope about the situation. What would happen if every person believed the system could be better?

Perhaps the words of one female offender serving a very long sentence can attest to the value of hope more so than a litany of correlational studies which are available from non-correctional settings.

> It was May 6th, 1990 and I found myself locked up in a dark damp cell in what I was convinced was the very bowels of existence.
>
> I was at my breaking point or so it seemed at that time and I found myself contemplating taking life itself. One phrase kept running through my mind that I feared giving time and thought to.
>
> On the grey cement wall, directly facing me, written in my own blood were the words, "Is the answer to life to be found in death? Take the plunge and the answer will be yours!"
>
> Over and over those words kept going through my weakening mind. There was a truth somewhere in those words that I found somewhat compelling. A kind of power that struck a fear into my very being.
>
> I realized that I was lost to myself and that I was at a critical crossroads in my life. I also know that the next minute, hour or even seconds could very well dictate what future, if any, I would have in this lifetime.
>
> Looking around, trying to change my mindset, I noticed some small scratches that someone had taken the time to carve into the far corner of the cell that I was trapped alone in. Moving closer, I squinted to make out what it was this person was trying to convey. Slowly I made out the words and found that I was completely unprepared for their meaning.
>
> Scratched, barely legible in the corner were the words "WHERE THERE'S LIFE, THERE'S HOPE." That's all it said, nothing more and nothing less. No explanation, no other words of enlightenment,

> simply "where there's life, there's hope." Five words, five words with enough impact that they felt like a slap on my face. A wake up call, a message maybe even divine in its simplicity. The impact that those five words had on me, so many years ago, while locked away in the dungeon of my own mind still ring loudly inside the recesses of my mind today.
>
> *Where there's life, there's hope.* There I was, contemplating the very depths of darkness and five little words lifted me into the light where I swore light could not exist…
>
> Slowly I lifted myself to a standing position and ever so gently I began to place one foot in front of the other. I began taking baby steps towards the life and hope that I had lost.
>
> I've fallen many times and I've managed to pick myself up each of these times. Every time I thought I couldn't pick myself up or that I was too tired and didn't want to get back up, those five words keep running through my thoughts in a never ending ticker tape – where there's life, there's hope – where there's life, there's hope – where there's life, there will always be hope.
>
> S.A. Kavanaugh
>
> (release signed in writing for use in this document)

A firm belief in the power of hope and the need to protect and nourish it, would increase the likelihood that it will be considered in policy and program decisions.

2. To be hopeful requires a consistent vision.

Hopeful people have a vision of how life might be better even when that life is not available at the moment. They envision a life in which they are willing to participate, even if that life is hard. The vision is often larger than just about them. The dream must be based on what is possible, not necessarily what is visible at the moment or calculated on the basis of the past. Effective leaders have an encompassing vision. They have big hopes and take small steps. It has been said, *"You can't put a big hope in a little soul."* Without visionary leadership change is slow to occur.

Author Maltie Babcock suggests if one has a passion, one "can expect three things: to be absurdly happy, entirely fearless and always in trouble." Hopeful leaders are not only the quiet leaders kneeling at the altar of policy and working through channels that are endless in bureaucracy. Those leaders are to be admired for their work. However, also needed are leaders relentless in their passion for change and able to articulate the hope they hold for the people they serve and the future that has not yet unfolded. It is no easy task to balance challenging unhopeful policies, procedures and personal behaviour with maintaining respect for process and with creating collaborative communities of concern.

Leaders facilitating change in an established system need to have mechanisms and supports in their own lives such that the hope does not waver. Without adequate support in their own lives and workplaces the capacity to be mentors of hope fades over time.

A well articulated vision of what a hopeful justice system would include sets the stage for long and short terms goals. It brings together a community of concern with a shared hope. This requires various kinds of leaders and a willingness to dream together.

3. Hope is not visible early in the change process.

The trend today is to have performance criteria for goals. The challenge with hope is that it is not always visible early in the process of change. In a PhD dissertation (which I supervised and which won a national award), Joanne Keen sought insight into the question "What is the experience and meaning of hope for people who have made profound change?" The people whom she came to know during that study were those who had lost hope, completely lost hope and in whom others had lost hope. Somehow they had gotten their lives back and we wanted to understand the role that hope played in them getting their lives back. In a nutshell a number of shifts were involved.

> First they shifted from *giving up on life* to *saying "yes" to life*. Secondly, they shifted from believing *change is impossible* to *becoming open to the possibility of change*. Thirdly, there was a shift from a perception of *being powerless* to *becoming aware of ones' strengths and potential*. Fourthly, there was a shift from an attitude of *reacting negatively* to *finding the positive*. Last but not least there was a shift from feeling *disconnected and alone* to feeling connected to others by *developing an understanding of the purpose and meaning of life*.

Over the whole process hope moved from some kind of instinctual desire to live to a conscious way of life. Only in the later stages of the process did people report actually thinking about hope yet in retrospect they could articulate how the seeds of hope were being sown in the earlier stages of change. As I reread the study I am struck by the responsibility to understand that hope is at work long before the evidence is visible. This is a compelling argument for preparing anyone who has contact with offenders, or persons at risk for offending, to work on the assumption that they can and will make a contribution to substantive change even if there is no apparent evidence of hope in the person's life. A theorist by the name of Prochaska identifies five stages of change: precontemplation, contemplation, preparation, action and maintenance. Using this framework, again, hope is not visible until stage four when we begin to see the action that a person is taking.

I recall interviewing a First Nation's woman who worked for E. Fry. I was gathering information on how veteran and effective workers could sustain their hope in the absence of evidence of change. I smile as I recall how she held up her palms and said "See, no nail holes. I am not the Savior. Hope is a chain. My job is not to break the chain. I am only a link. It may be a long ways down the chain before they change but I must not break the link." It is this capacity to believe in each person and to accept responsibility for contributing to a continuity of positive experiences from people in helping roles that cannot be over emphasized.

The seeds of hope are worth planting. Although it is satisfying to people who need the language of accountability to see indicators of hope early in the process, time is a factor in the growth of hope. Interventions aimed at outcomes that are evidence based on the short term may be premature and may risk being short lived in their impact. Projects aimed at longer processes need funding and support.

4. Hope is a complex, multi-dimensional experience.

Hope presents us with particular challenges when we want to talk about it. It has unique meaning for each of us. It can't be prescribed. It can't be injected. It can't be x-rayed. We suspect there is a biology of hope; how large a role it plays we don't know.

I think it was Churchill who said, "For every complex problem there is a simple and wrong solution". Understanding hope simply as belief or an emotion, a physical attribute or as a behavior is erroneously narrowing its nature to fit our need for simplicity. It is not to be equated to goals and outcomes. There is a much deeper understanding. Hopeful people set goals but goals don't necessarily make people hopeful.

An understanding of hope as a complex experience lays the foundation for accepting the many factors that come into play. Hope is about outcome *and* process; about heart *and* mind; about mental *and* emotional. Programs focusing on coping and on behavior change alone may indeed influence behavior yet might fall drastically short of nurturing hope back to the substantive levels necessary to sustain the change in behavior.

Coping is what is necessary for survival, what makes it possible to get through the day. Hoping is what makes it possible to think tomorrow might be different. What that includes however is unique to each person. It is not always related to goals in the sense of setting goals for the future. People who are low on hope are reluctant to see and work towards goals. This symptom is a clue that goals may be premature. The repair of hope may need attention first. When little hope is evident, hope facilitators need to develop a language which focuses on the future without focusing on goals.

Accepting hope as complex and multidimensional would go a long way to developing policies and programs respectful of that complexity. Simple solutions don't work for complex situations. Hope must not be simplified into a series of goals or expectations that are to be accomplished. Rather hope might be thought of more a developmentally maturing through programming and relationships.

5. Hope is developmental.

Trust is crucial to the experience of hope. Eric Erickson, a psychologist suggests that having a relationship of trust (with a primary caregiver) is the first developmental task of life and that the outcome of having such a relationship is the experience of hope. Persons who have repetitively had trust violated appear to have more difficulty sustaining hope. The earlier the violation, the more severe the developmental delay of hope. Without the experience of hope, people do not feel safe in the context of uncertainty and will do what they need to do to feel some level of control over their own life.

Life experiences contribute to the depth and quality of hope that we experience. Few studies to date have explored the developmental nature of hope. There have been studies of hope in homeless children, adolescents with cancer, Tanzanian young people, Newfoundland young women, children with cancer and the recovery of hope in sexually abused young children. More are needed.

The sum of the persons, events and experiences that occur in a person's development becomes what we refer to as a **hoping self**. The encounters with hope and hopelessness are different for each person. In other words our hope histories are unique. Each person has a personal and unique DNA of hope which we call *the hoping self*.

> The hoping self is that part of the self which gives rise to hope. In relationship to the self, it can be viewed as the inner, central core. The hoping self is difficult to describe or explain, but has been referred to as an "inner strength," a life-oriented source or a "state of mind".
>
> C. Nekolaichuk, *Learning to live with uncertainty*, 1990. p. 64

Often in a helping relationship it is the "problem-self" or simply "the problem" or even simply one's behaviours that is assessed and explored. There has been less emphasis on uncovering the inherent strengths of a person which may be tapped in this new situation. The hoping self of each person will be uniquely configured and embedded in their life story.

A trusting and caring dimension to relationships is core to hope work. The hoping self will be more visible in a relationship where respect and safety make it possible to explore one's, past, present and future. How could the need for physical safety for all persons in incarcerated situations be balanced with respect and dignity which are the foundation of trust. Indeed justice workers may be more safe if they have the capacity to consistently convey a respectful stance.

Hope is developmental. It is enhanced in situations where the integrity and trustworthiness of a person is predicatable.

6. Hope is an embodied experience.

The body is often the barometer of hope. One can feel ill but still feel hopeful. It is not a matter of the physical wellness but a deeper sense of the future that the body seems to hold. Events that are interpreted as hopeful or hopeless are registered in the body by the senses. Although little is written about the embodied nature of hope, we are increasingly aware that people 'know' if they are hopeful through their senses - image, sound (including tone of voice), texture, smell and so forth. It seems that it is in the body that hope is *lived* despite the condition of the body. One might think of it as housing the spirit. The body also seems to sense an uplifting of spirit when there is a *living* hope developed between two or more people. If there is an interaction that is respectful, the body actually feels more hopeful.

Hopeful environments have the capacity to enhance hope. An incarcerated person is to be deprived of their freedom. If hope was to be evident in the environment, what might that mean for the physical places where they are housed? What might it mean for the contexts which breed or encourage crime? How might the incarcerated person assist in the creating of a hopeful environment?

7. Patterns of hopelessness can be counterbalanced with hopeful patterns.

In addition to the factors identified as contributing to hopelessness, four patterns of the coming together of those factors has been noted. They can be referred to in very ordinary language as the *skidding effect, bruising effect, alien effect and the boomerang effect.* These almost self explanatory patterns include feeling out of control, being hit in the same place over and over, feeling like no one is listening and feeling like someone one thought was resolved is back again. The capacity to sustain hope in those situations is patterns of hope that act as counterbalances. Developing control helps the sense of skidding. Healing is needed for the bruising. Connecting is the counterbalance to feeling alien, connecting with others and with community, Being able to generate additional possibilities is necessary to offset the boomerang effect. It is worthwhile noting that the choice of counterbalance is important. For example, using increased control as the counterbalance to bruising is not as effective as the pursuit of healing.

Understanding patterns of hopelessness assists in being more selective about patterns of hopefulness that might have maximum effect.

8. Hope can be accessed and enhanced through creative activity.

Hope does not necessarily reflect logic or problem solving processes. Rather it often involves creative symbolic processes. First Nation and Metis cultures are well situated to promote the role of symbol, creativity and ritual in hope. Many of the cultural and spiritual practices already incorporate these dimensions.

The long accepted practices of First Nations peoples' throughout the world are recently the focus of many studies which confirm that the experiences of expressing one's self and culture through forms of creativity, sacred symbols and rituals are profound contributions to well being on all levels. The power of story and music and dance are taken for granted in First Nations' cultures yet are not the focus of many of the opportunities offered to inmates.

A small experiment in which I am involved is directed at the potential for writing to be therapeutic. Other settings have been using writing with offenders. This fall a film is being released about the impact of inmate writing and Dialogue House (New York) has a major contract with the Bureau of Prisons in the United States to train persons to teach journaling to incarcerated persons.

Below is a statement I wrote that guides my own belief in this work

Writing will fill your heart if you will let it.

Judy Cameron: The Right to Write

> *I have a dream. That every person in this institution, offender or employee, would write a piece that they feel good about. That every person would come to know they can 'author' their own life despite circumstances. That every woman would experiment with writing, would come to understand that it is not about good spelling and grammar. It is about knowing and believing in ourselves. It is about building community in a*

culture of pain and punishment. I have a dream that the pain could go on paper rather than be carved into her own flesh, or numbed by medication, legal or illegal. I have a dream we would find a way of speaking our truth to ourselves, to those we hurt and those who hurt us; and to those who imprison us, including ourselves.

I have a dream each woman writer will recognize the longing of another and gently encourage her to also find her voice and that we will become a collective voice, not of rebellion and advocacy but of change at its deepest level. That with your writings whether they be vignettes, or poetry, or starter novels- that you can craft a community of concern with your writing such that every women has at least a chance to someday say I can 'Be here, Be myself and Be hopeful'.

I have a dream that every woman released from this institution will know her life story and have learned from it. That she will feel equipped to write her next chapter, that she will choose her co-authors well. That those responsible for custody will write to develop themselves as characters who are instruments of humanity.

I know that when I leave here, you cannot. Yet, I know of many situations where incarcerated people found a way of not only surviving but found ways of finding meaning while held in captivity, fairly or unfairly.

Inspired by the EIFW Writing Group
Ronna Fay Jacqueline Jevne
August, 2003

Hope is often best expressed in an art form. Encouraging expressions of hope at this level may assist in preparing people for more cognitive interventions aimed at more 'practical' skills. Art, music, drama are powerful pathways to replenishing, reigniting hope.

9. Hope is about possibility, not probability. Unlike optimism the power of hope lies in the potential of the future rather than the pattern of the past.

On the basis of history we attempt to predict the future. We speak of 'relapse prevention' and assume we can establish predictors on the basis of the past. Often these predictions are relatively accurate. If those predictions are going to be brought into question, new possibilities must be generated. If only the old possibilities are available, the pattern will be similar.

Incarcerated persons often feel their options are very limited, that the expectations for them are unrealistic and that they have little hope of opening doors that were already closed and now will be more firmly restricted due to their incarceration. As well they are not accustomed to generating possibilities.

Learning to generate possibilities is a key competency of a hopeful person. Many possibilities require the aid of others. The possibility of meaningful employment requires the opportunity for education, the possibility for healthy relationships may mean relocating geographically and so forth. Creative approaches to generating possibility and the funds to enact the ones with potential would assist in breaking of old patterns which if continued will predictably lead to failure, hopelessness and re-offending.

10. Hope can be inhibited, enhanced and learned.

Hope can be *intentionally* learned, strengthened and repaired. Numerous studies have attempted to articulate what it is that others can do that enhance hope. To date there has not been a study of what can be done to enhance hope in people in the justice system, offender or worker. One study of ill patients has suggested that caregivers are more often named as people who dash hope than people who strengthen it. It would not be surprising to find similar results in the justice system.

Trauma, chronic conditions and life challenges all assault hope. One way of eventually coping is to stop hoping. With "intentionality" hope can be practiced and reawakened. A mindfulness is necessary in order to make hope a habit. At the risk of redundancy, there is a *doing* and a *being* to hope. It combines the best of *goal* and *soul*, of *will* and *way*. Hope is about more than outcomes; it is also about process.

The benefits of present programming aimed coping are short lived if the person feels there is little or no probability of a future. Their willingness to respond to caring or enact coping strategies will be low. Only over time, the challenge is to learn to ask in difficult circumstances, "What would a hopeful person do?"

It is important to build a wall between hope and hopelessness. People can learn to take charge of their own hope and not be as vulnerable to hope sucking people or circumstances.

11. Respect in relationships is key to fostering hope.

Communication that conveys hope begins with respect. Even small insensitivities erode the trust which is the foundation of hope. A brusque word, a broken promise, a tactlessly communicated directive, an uninvited intrusion - all erode hope. It seems indiscriminate language in particular is lethal to hope. In this day and age, we worry about lethal doses of medication. It is now time to be concerned with lethal doses of language. Without having respect modeled, it will not be learned. The respect must not only be felt but conveyed.

> Let people recognize clearly that every time they threaten someone or humiliate or hurt unnecessarily or dominate or reject another human being, they become forces for the creation of psychopathology, even if these be small forces. Let them recognize that every man[person] who is kind, helpful, decent, psychologically democratic, affectionate, and warm, is a psychotherapeutic force even though a small one.
>
> Abraham Maslow

What would it mean in the course of a day's work to convey respect? The internalizing of respect is no easy task. Discussion of such issues takes us to the realm of moral justice or moral rights. The most satisfying perspective I have found that speaks to this is the Canadian Code of Ethics for Psychologists, the document expressing the principles to which I am asked to aspire as a psychologist. Below are the essential thoughts drawn from that document:

- The belief that each person should be treated primarily as a person or an end in him/herself, not as an object or as a means to an end. In so doing [psychologists] acknowledge that all persons have a right to have their innate worth as human beings appreciated and that this worth is not enhanced or reduced by culture....[etc]

- Adherence to the concept of moral rights is an essential component of respect for the dignity of persons. Rights to privacy, self-determination, personal liberty, and natural justice are of particular importance...

- As individual rights exist within the context of the rights of others and of responsible caring there may be circumstances which may disallow some aspects of the rights. However [psychologists] still have a responsibility to respect the rights of the person(s) involved to the greatest extent possible under the circumstances

A serious commitment to respectful relationships is not easy. It is however key to engendering hope. Having employed persons internalize this is a mammoth challenge. Without this increases in systemic hope will be thwarted or at least limited.

12. The hope of every justice worker is important.

Hope is very difficult to fake. The hope of the people with whom the accused or the offender comes in contact with is unquestionably a factor in the issue of hope. While professionals assess the condition and dilemmas of these people, they are simultaneously assessing those with whom they come in contact. Justice workers could ask some of the following questions: Will I even listen to their hopes or do I have my own agenda? Do I believe in the work that I do? Do I think I can influence the world in some small way? Do I believe the people I am responsible for are worthy of my time? Am I demonstrating a valuing of them in my behaviour? Do my colleagues convey respect to each other and to offenders?

If a work setting is not hopeful, it is difficult to be the sentinel of hope in the desert. The justice worker is more likely to be able to offer hope if s/he feels it in his/her own life. If s/he has adopted an attitude that things can't be different, that people don't change, that my job does not require caring or respect, he/she is likely to also suffer from a vision of the future than is not sustaining health. People with a personal vision of their work, who accept that despite limitations that they can make a difference are more likely to be healthy and hopeful.

The hope of every person in direct contact with the justice system and in the community related to the system is an important component of effective hope work. Effective helping involves many skills. Sustaining our own hope and the hope of those who are challenged is often not on the conventional lists of competencies. Yet, in its absence work is not rewarding.

CONSIDERATIONS FOR EFFICIENT, EFFECTIVE AND FINANCIALLY RESPONSIBLE REFORM

The criteria of *efficient, effective and financially responsible* are admirable. We can however do things efficiently and be doing the wrong things. We can be doing things effectively and the cost be exorbitant. We can *appear* financially responsible and be achieving little. In generating questions for consideration and recommendations, I have chosen not to address the resources. I do however believe substantive things can be done.

Hope is a necessity for survival. In the same way that food, water and shelter would not be denied, hope is key to the survival of our 'humanness'. People need to be seen for who they may be, not only for who they presently are.

QUESTIONS:

Key players

- Who is willing to work toward a hopeful outcome?
- For change to occur who has to be convinced that hope makes a difference?
- What would I be doing if I was living as if this situation was hopeful?
- Who are the hopeful leaders and what support do they need?
- About what hopes might all parties agree or nearly agree?
- What could I personally look at differently?
- What do each of us need to sustain our hope until hope for the system becomes visible from our efforts?
- What change in circumstance would give you (others) the greatest hope?

Current state of hope

- Who hopes for what?
- What is threatening hope in the justice system?
- How do you account for that fact the system is as hopeful as it is?
- What do various people/groups of people believe/do/feel that is **threatening** hope relative to the justice system?
- What do various people/groups of people believe/do/feel that **is enhancing** hope relative to the justice system?
- Having considered beliefs, behaviours and feelings, where are the pockets of hope within and outside of the system?
- What could happen that would make things even worse, even less hopeful? How might those forces be addressed?
- What symbols of hope presently exist? What symbols could be developed?
- What could be celebrated?
- For what could we be grateful?

Future hope

- What could be more hopeful in the short run?
- What could be more hopeful in the long run?
- What are the three most hopeful things that can be implemented by
    - Individuals
    - Institutions
    - Policy makers
- What is the smallest step that can be taken? By each vested interest?
- If something unexpected and positive could happen, what might it be?
- What experiments would be worthy efforts at hope?
- How might creative activities/solutions play a part in the solutions?
- How would we know if there was more hope in the system?
- How will the story of this commission's influence be told 1 year, 5 years and 15 years from now?

The lens of hope

- What, if any, obligation does the criminal justice system have with regard to social and moral justice?
- How can patterns of hopelessness (skidding, alienation/isolation, bruising, & boomerang effects) be addressed. In other words how can control, community/collaboration, healing and possibility generation be addressed?
- What is the skill set/the necessary competencies for being a hopeful justice worker?
- How might the face of injustice be personalized? Not just the victims of a crime, but the victims of social and moral injustice?
- What must we further understand in order to understand hope and hopelessness in the situation?
- If HOPE could speak what might it be saying?

You might ask yourself, which of these questions most stimulates my thinking about hope?

RECOMMENDATIONS

Taking a Hopeful Stance

- Recognize that attitudes takes time to influence. The shifting of a value system involves influencing deeply rooted biases based on partial information. Any intervention aimed at shifting attitudes is a long term investment, well worth the resources but not necessarily immediately visible. Roger Lewin in *Complexity: Life at the edge of chaos* suggests that in biological evolution, experience of the past is compressed in the genetic message encoded in DNA. In the case of the human species our institutions are a kind of cultural DNA. It will take a long time to select out the unhealthy dimensions.
- Think of hope at three levels: Hopefully all interventions aimed at helping have as their intent, to maximize the possibility of a **hopeful outcome**. At this level, one tries to do things that help but does not necessarily think consciously or intentionally about hope. A **hopeful framework** would be characterized by the using hope as a lens through which to consider the situation. A **hope focused** intervention is one is which hope is addressed directly both by all parties.
- Develop a committee whose mission is to further explore the potential for hope for First Nations and Metis Justice.

Identifying and Magnifying Existing Hope

- If not already done, undertake an accurate understanding of pockets of hope in the present system in order to assess their potential for expansion.
- Brainstorm for ways of reinforcing hopeful people and programs in the system.
- Include in the hiring interview protocols means by which to assess the hope levels of the applicants. These might be written and/or interview assessments.
- Include assessments of hope and hopelessness in the standard assessments of offenders. Don't rely on depression scales as predictors of hopelessness. These instruments are presently available and not costly. For example, there is software that can analyze speech of less than 200 words and identify levels of hope and hopelessness. It could for example also analyze a report such as this for those dimensions.

Increasing Public Awareness

- Hold an event (symposium), the intent of which is to influence the media to more often report hopeful justice related events.
- Sponsor a conference on Hope for First Nations and Metis People & Justice.
- Ensure the public is informed about those who are able to make meaning in difficult circumstances and have turned their lives around.

Introducing Hope into Training and Programming

- Create several pilot projects in which hope focused approaches can be tried out with different groups. For example, groups of youth at risk to offend, first time youth offenders, incarcerated persons, drug users. Partner with researchers who can ensure the findings are controlled and be sure that qualitative data as well as quantitative date is collected.

- Introduce the concept of hope in training for police officers, social workers, probation officers and other appropriate personnel. For example, training in the use of hope for social workers in the Ministry of Children in Alberta has been received very favorably.
- Include hope as a concept and eventually as an intervention in existing program modules presently offered to offenders.
- Initiate one or more local pilot projects including inmates, staff and community with the mandate develop a more 'hopeful culture' in the justice system. Perhaps include the media.
- Develop criteria for assessing policies for their impact on hope.

Influencing Young People

- Create a *coordinated blueprint* intended to maximize the opportunity for exposure to hope for First Nations and Metis
- If it doesn't already exist,, create a First Nations and Metis Leadership School.
- Establish a mentorship program for First Nations and Metis youth.
- Create a mechanism by which to recognize youth who exemplify hope.
- Create a First Nations and Metis Youth and Hope Action Committee.
- Develop culturally appropriate curriculum modules related to hope.
- Create a Youth and Hope Arts Award. This competition would request young people to submit representations of hope in various art forms (painting, drawing, bead work, photography, song dance).
- Sponsor First Nations and Metis Youth to experiences likely to develop leadership competencies in a hopeful context. In Alberta an example of such a program would be the Co-op Camps put on by the Rural Education Development Association and held at Gold Eye Lake.
- Create opportunities for non- First Nations young to have experiences with First Nations and Metis youth in the First Nations and Metis communities.
- Enhance programs intended to encourage First Nations and Metis youth to complete and extend their education.

Pursuing Further Understanding

- Do a qualitative study followed by a survey of *incarcerated persons* to find out what offenders have experienced as hopeful in the system.
- Do a qualitative study followed by a survey of justice system *workers* to find out what offenders have experienced as hopeful in the system.
- Develop indicators of hope, not to be confused as synonymous with outcome measures of 'success' in various levels of the system. This would require identifying people with the expertise to pursue this more subtle task.
- Ensure that persons with different views of research are included on research review committees.

> *When someone faints, we call for water, eau de Cologne, smelling salts; but when someone wants to despair,then the word is: Get possibility , get possibility...for without possibility a person seems unable to breath.*
>
> Kierkegaard, S. (1990 translation). *The Sickness unto Death* (1848).

YOUTH HOPE PROJECT

By Joan Fouts, School Principal

"Hope, a vision or dream that becomes reality through honesty, effort and perseverance." Grade 8 Class at Eastwood 1998

The work on hope began for me when I worked at Eastwood School, an inner city school with a very high risk, high needs population that was 70% aboriginal. The aggressive behavior, very limited success in school and no apparent desire for change caused me to look for a different way to reach these students and to create a community of hope. The success with the students at Eastwood was exciting and extraordinary. In tracking a few of the students in the original hope group at that school, a large percent have gone on to complete high school this past year. The Grade 8 class at Eastwood wrote the quote at the beginning of this paper after working together to discover what it would mean to live their lives with intentional hope.

I want to share a story of hope, which is one of many that could be shared with the hope work in our school. My first encounter with David, a grade 8 student, was in the fall when I was called to the gym because this student was out of control, threatening, screaming and swearing at other students and staff in the gym. I kept my distance hoping that David would respond to my voice and come with me. He responded by picking up a large metal garbage can and throwing it at me. Immediately, he ran from the gym, slammed his hand into a glass and broke it on his way out of the school. David was a high risk student who was having a great struggle with depression and was at times suicidal which was evident in his appearance, self abusive actions, words and in the sadness that he carried in his eyes and his countenance. As with all the Junior High students, David was a part of the hope project for his Grade 8 and 9 years, at our school (this process will be discussed later). This fall, 2003, two years later, David shows up in the office in September asking to see me before he moves to another province with his family. I was in a meeting and had asked that I not be disturbed, but David would not take no for an answer. He insisted that he knew I would want to be interrupted to see him and he was right. What a different young man presented himself that morning. He was well dressed, clean, hair combed and a smile from ear to ear as I greeted him. He shared that he was leaving on Sunday and wanted to be sure to let me know that he was going to do really well in his new school. He proudly shared his dream of finishing high school so he could go on to a trade. "I know I will do really well in my new school and you will be proud of me," he confidently stated as he left. David is a success. A student who was failing and did not even want to face another day two years previously had discovered his value and meaning through the hope project. While this is a dramatic case, there are many other students who have expressed that the hope class and the character education focus in the school has given them the meaning and purpose they needed to believe in themselves, the courage to risk dreaming and the hope that motivates, sustains and energizes the achievement of their dreams.

The Hope Project Process

The hope work begins with students thinking about about hope. What is hope? What does it mean to be a person of hope? How would we recognize hope? We begin our thinking and dialogue about hope through a number of activities one such being to create an acronym out of the word hope. The second step in the exploration of hope and how we can live each day intentionally with hope, is to reflect on behavior that exemplifies hope. Students increase their awareness of actions and choices that they make to increase the hope energy in themselves and in the school as well as to name the actions and choices that deplete hope. Through our journey, we share stories to help us define hope filled behavior. To extend and deepen the understanding, we then begin to share personal stories of how hope is nurtured or drained from our days. The third phase is to begin work with symbols, music, art or pictures of hope. Each student creates a hope journal and a hope kit, which has significant items or symbols that are representative of hope. These are very personal and precious items that the students share with the group as they choose. According to the students, each story that is shared fills them with hope through increased understanding, through the connections made to the stories of others, through the caring that is offered and through the appreciation that grows for similarities and maybe even more importantly through the awareness of the richness that there is in diversity. Finally, the students participate in creating a project that will conceptualize their beliefs in being a person of hope. The works are represented in color, symbol, words and stories shared. There are many significant signs of growth and success as the school community members manifest a more caring, responsible and respectful attitude and behavior.

Each year, students greet me with "when do we get to do hope?" The meaning and purpose that is evident through the process as well as the ongoing determination and courage that students demonstrate as they reach for their dreams and seek to live each day as a valued member of our school community. Seeing the growth and the transformation in students has inspired staff and they have formed a hope group in the school so they too can embrace the journey. The outcomes of the work the staff has done in the hope group is having an impact personally and professionally as is expressed in these comments shared by staff from the hope group:

- With hope there is ongoing renewed meaning and purpose in my work
- Hope has opened doors to creativity and increased possibilities
- Hope helps me find ways to resolve issues
- Hope respects diversity
- Hope means I will be better tomorrow than I am today
- Hope has increased my energy and dreams for myself and my students
- Hope is the reason I went into education in the first place, I had lost that sense of valuing and cherishing each child

OUTCOMES OF HOPE

The work with hope in our school has opened new horizons, changed the way we work together and empowered students and staff to be the best they can be. Student growth is evident in more respectful, responsible behavior, a desire to serve, goals set and achieved and improved academic success. Students become mentors for each other supporting and encouraging success as they meet the challenges of each day with hope. At the current school, students coined the phrase that they would like to be "people of honour." Hope inspires and challenges from within empowering us to try again another day when we stumble or fall. Hope also, allows us to celebrate success with humility and an appreciation for the diversity and uniqueness of each person.

THE POWER OF HOPE: LEARNING ALONGSIDE CHILDREN AND YOUTH

Lenore Lemay,

Director of Child, Youth, & Educational Services

Hope Foundation of Alberta

At the Hope Foundation of Alberta, projects intended to address and enhance the hope of children and youth have been taking place for nearly a decade. We have worked with youth in a community service learning project entitled Hope Kids where youth ages 12 to 17 intentionally bring hope to those with whom they interact, in classrooms at all levels, in special projects like the hope and bullying unit and most recently in a project to infuse hope in a grade nine religion curriculum. As a result, of this ongoing work, a pedagogy of hope designed for children, is emerging. Utilizing and building on strategies for fostering personal and collective hope through developed resources like the existing grade four curriculum entitled, Children Looking at Hope, the Hope Kids monograph and Hope Kids Manual (Stremchuk and Gurnett, 1995; Pertman, 2001; and LeMay, 2001) helps to make hope visible and accessible.

Much of the early hope research with children and youth, like the research conducted with adult populations, centered on goal setting and attainment (Snyder, C. R., McDermott, D., Cook, W., and Rapoff, M. A., 1997). Understanding the role of agency and pathway thoughts continue to play an important role. However, other insights also contribute to our ongoing work. First, hope descriptions and discussions include the presence of a significant other (Baldwin, 1996, Danielson, 1997; Edwards, 2002; Herth, 1996; Parkins, 1995). "Just like adults, teenagers want their stories to be heard, their voices to be acknowledged and their experiences validated" (Parkins, 1997, p. 58). In a developmental study with homeless youth, hope was described as two-dimensional, with an inner center core of hope, and an outer ring of flexible directed hopes (Herth, 1996). Through acceptance of uncertainty and continuity in their lives, Newfoundland females, stated "hope is my identity" (p. 126).

Hope Kids often seek out opportunities to use hope. For the children and youth we meet in schools, participating in hope activities is a novel experience. What we have learned about children, youth, and hope in these different settings tells us that we must continue to listen and provide guidance for opportunities to delve more deeply into our understanding of hope next to what children and youth convey.

The caregiver who does not listen conveys the message, "I don't understand your hope, let's do my version of hope," (Jevne, Williamson and Stechynsky, 1999). Listening in a respectful and serious manner seems to encourage youth to voice and name their hope authentically. I think about the time I was working with grade five students writing metaphors of hope. Early in the discussion, a student stated, "Hope is like a video game." I asked him how video games gave him hope. During his explanation, it seemed he began to realize he was at a loss for how to make the connection. I told him I would let him develop his thoughts more fully on paper in a few minutes. When it was time to write, he did not compare hope to a video game, instead, he wrote, "Hope is like a tree". His comparisons included:

- gives a home
- calms the spirit
- gets rid of fear
- shows me there's more to life than just television and video games, like helping an animal in need
- brings life

I believe this youth came to see his hope as an important part of his being when he had an opportunity to reflect on his hope seriously.

By accepting what youth have to offer, as important contributions to their understanding of themselves, we acknowledge the role of hope in our lives. We increase repertoires of hopeful strategies or ways of coping. Being aware of the hoping process can be reassuring for youth when they are feeling less hope.

When asked about hope, many Hope Kids reply, "Everything we do together is hope." Without further prompting, that would be the end of the discussion. However, because "we can know more than we can tell" (Polanyi, 1966), there has been a concerted effort to make hope visible through representations like hope trees, communities of hope, hope poems, and Hope Kits in the Hope Kids program. Photo-assisted conversations conducted in the spring of 2003 depicted explicitly how hope is visible to the photographer and viewer when a serious conversation occurs around the photographs (Edwards, 2002, Hubbard, 1990, Parkins, 1997, Ziller, 1990). Hope Kids took photographs of things they liked to do. They took pictures of dancing, being in cadets, playing the piano, and being out in nature. They talked about writing hope poems to get themselves through difficult times and helping friends to cope with difficult circumstances by sharing what they learned looking through the lens of hope. One Hope Kid talked about learning to journal as a hopeful strategy. He explained, "I can write down ideas of things I can do and I am not limited to anything." Another Hope Kid talked about playing the piano. "When I play the piano it makes me feel calmer and I think it offers hope."

Describing inner hopes and dreams through representations and reflections also encourages youth to understand more about who they are and who they are becoming. When describing a photograph of her bedroom, one Hope Kid explained, "I really enjoy my bedroom because it makes me feel almost safe. I like having the feeling of control. Because if you do not feel in control and do not know what you are doing, your self- esteem might go down and without high self-esteem you cannot have the highest level of hope.

The role of story is crucial in the creation of one's hoping self in relation to identity (McAdams, 1993, Snyder, C., McDermott, D., Cook, W., and Rapoff, M.). Hope Kids insist that one of the best things about being a Hope Kid is the opportunity for learning from the stories they share with residents. One Hope Kid describes it this way, "I like making new memories to share down the road."

In another project undertaken at the Hope Foundation of Alberta during the spring of 2003, eighty students reflected how they could use what they learned about hope to understand their role in bullying after they participated in a variety of conversations and activities about hope and bullying. Comments like, "The people being bullied need hope so I can help them by giving them hope." "If you are hopeful it can give others hope and stop bullying altogether." "I learned that I should try not to take people's hope away because it really hurts them." "I learned that bullying takes away hope and creates hurtful thoughts, depression, and sadness. So, in turn I myself will never become a bully." "I can give people hope by talking to someone that is usually quiet and away from everybody else."

At the conclusion of the hope and bullying project, one classroom of twenty or so students, along with their teacher, embarked on an additional hope project. Groups of students reflected on different hope questions and then surveyed their classmates to see how their peers felt about their particular question. Next, they reflected on the results of the class surveys next to their own feelings and thoughts. Some of the reflections included:

- where there is no hope there is no community
- when you have a sense of hope you can overcome obstacles
- with hope there comes direction

One group summarized, what I believe to be a message for all to hear and act upon.

> Most people we surveyed agree that with hope we can overcome almost anything. Through this, we learn that hope is a great importance in our lives. We know because if someone is hopeless, they usually are not happy. They have less trust and that usually drives friends away. They have trouble concentrating and their grades suffer. They are most likely to be pessimistic. Suicide is a common answer in this situation; yet, life means new hope. That is how we know hope is important.

In conclusion, both Hope Kids and the youth we meet in other settings reminds us to listen and encourage an awareness of hope which is not always easy, but necessary to move forward into an uncertain future.

REFERENCES

Baldwin, C. M. (1996). Perceptions of hope: Lived experiences of elementary school children in an urban setting. *The Journal of Multicultural Nursing and Health*, 2(3), 41-45.

Danielsen, S. M. (1995). Exploring hope with children living with cancer. Unpublished master's thesis, University of Alberta, Edmonton, Alberta.

Edwards, S. (2002). What is the experience of hope for female adolescents of rural Newfoundland. Unpublished doctoral dissertation, University of Alberta, Alberta.

Jevne, R. F., Williamson, H. & Stechynsky, A. (1999).The Minerva dialogues: Hope and chronic conditions. Edmonton, AB: The Hope Foundation of Alberta.

Herth, K. (1996). Hope from the perspective of homeless families. *Journal of Advanced Nursing*, 24, 743-753.

Hubbard, J. (1990). Shooting Back. *Life*, 13 (14), 94-101.

LeMay, L. M. (2001). Hope Kids Manual. (In preparation).

McAdams, D. P. (1993). The stories we live by: Personal myths and the making of the self. New York: William Morrow and Company, Inc.

Parkins, S. (1997). Exploring hope: a journey with Tanzanian adolescents in a school setting. Unpublished master's thesis, University of Alberta, Alberta.

Pertman, S. Q., Jevne, R. F., & Valiakalayil, A. (2001). Hope Kids: Linking generations through hope companionship. Edmonton, AB: The Hope Foundation of Alberta.

Polyani, M. (1960). The Tacit Dimention. New York: Doubleday and Company, Inc.

Snyder, C. R., McDermott, D., Cook, W., & Rapoff, M. A. (1997). Hope for the journey: Helping children through good times and bad. Boulder, CO: Westview Press.

Strebchuk, S., Gurnett, J. (1995). Children looking at hope. Unpublished Manuscript.

Ziller, R. C. (1990). Photographing the self: Methods for observing personal orientation. New York: Sage Publications.

SECTION 7:

THE ABORIGINAL FRIENDSHIP CENTRES OF SASKATCHEWAN

REPORT TO COMMISSION ON FIRST NATIONS
AND MÉTIS PEOPLES AND JUSTICE REFORM
DECEMBER 2003

BACKGROUND

The Friendship Centre movement in Saskatchewan dates back to 1958 when one of the first Centres opened its doors to respond to the needs Aboriginal people faced as they moved into larger centres. These kinds of centres were developing across the country as needs of Aboriginal people evolved and grew in the larger (urban) centres.

The centres were started and run by community, often based on small donations, volunteers and some grants from governments. This is a key feature to the development and the current structure of Friendship Centres each Centre is created around the issues specific to each community it serves. Because Saskatchewan is not a homogeneous community and the history and growth of the First Nation and Métis people vary across the province, the issues faced from North to South, East to West, were not identical, even though there was overlap. This in fact holds true today.

In many respects Centres were the vehicle by which urban issues faced by Aboriginal people were dealt with because these issues were often left to fall between the cracks and did not deal directly with the lifestyles of Aboriginal people. As these needs were identified each Centre grew and the direction was identified.

The objectives of the Centres in Saskatchewan include:

- Primary Program and service delivery agent,
- social and community development,
- referrals,
- network to promote positive relationship between Aboriginal and non-Aboriginal peoples and communities,
- identify community issues/needs and priorities

As mentioned previously, the range of services and programs is vast and varies greatly from place to place according to the demographics and geographics (which may limit what is available) of each community. The list also changes over time with the creation of new programs and services and demands of the various agencies.

Programs and services provided include or have included:

- sports/culture recreation,
- Aboriginal literacy,
- music,
- dance,
- teen parenting skills,
- family violence,
- housing,
- drugs/alcohol abuse,
- substance abuse
- literacy,
- job skills,
- food bank,
- diabetes education and care,
- cultural education
- court workers,
- alternative measures,
- Elders,
- soup lines,
- fine options,
- Santa's Anonymous and Christmas gift giving
- food at Christmas, Thanksgiving Easter and so on,
- traditional feasts and ceremonies,
- meeting and gathering places
- Safety shelters

The Centres range from intimate meeting places where everyone knows each other to larger urban spaces where the clients are more transient and facing urbanization issues. This clientele also shifts from region to region and over time as the issues they face evolve and change. There are 13 Centres currently operating at various capacities in Saskatchewan and in fact over 100 nation-wide.

Another key component of the Friendship Centre development is the fact that they are not political, partisan, or for profit. This feature of the Centres keeps their mandate focused on actual programming and service delivery to Aboriginal people as opposed to the politicization of issues and daily partisan struggles among governments. That is not to say that political meetings are not held in the various Centres, however, all governments have utilized the Centres as a meeting place.

The Centres are also "status- blind" a strength which allows service delivery to Treaty Indians, Non-status, Métis and some of the Non-Aboriginal poor who are in need of programs and services in the urban centres. This is an advantage for the client in a centre where there may not be services available to them based on their Aboriginal Status.

The Friendship Centres in Saskatchewan and indeed across the country have grown and shrunk in size over the years. The programs and services they offer have changed and the clientele has an ever changing face yet the key feature of all is that for Aboriginal people they are a KNOWN and ESTABLISHED PRESENCE in all of the urban and rural areas in which they have a home.

COMMUNITY DEVELOPMENT AND FRIENDSHIP CENTRES

Identification of what programs and services are available within each Centre turns on a multitude of factors. This includes first and foremost the needs of the community. As the patrons of the Centres arrive and/or become involved with the Centres, their particular needs and suggestions for what the Centre can do for them or within the community can be identified. Also, the staff and volunteers may see a gap in programming or in services offered within the centre or from other agencies where Aboriginal client's needs are not identified or met. Yet another example is when the Centre is approached by an outside organization or government department seeking an Aboriginal agency to deliver a service. Again it is important to note that the services vary for each Centre depending on where the Centre is and who the patrons are.

The priority of what is offered is also an issue which must be managed on a number of variants. Primarily, once there is a recognized need for a formalized structured service, a determination of the resources required must be completed. Because the Centres are always trying to meet the needs of their patrons in the face of skeletal infrastructure and resources it is a misnomer to think that if there is a need, nothing is done if there are no resources. Problems arise where resources are so low that the existing staff and volunteers are trying to play the role of many social workers, babysitter, paralegal, addictions counsellor, parent and so on. Sufficient staff, who are properly trained and supported eliminates this issue.

If there are insufficient resources to create a program, or no funding agents will resource the needed program, the Centre falls to its volunteers and staff and does the best it can with what it has. Of course this may be of little assistance to the patrons and it certainly does not allow for any progress on the root cause of the social symptoms of the identified problems but that is the reality of the Centre's ability without proper resources.

If there is a funding agent available that option is always utilized. This process soon turns into the funding proposal game which offers up money on a short-term basis, reviewable by the funding agent and which may or may not result in the renewal of programs – even when they are very successful. In some cases a relationship is created where the program is renewable and it runs on a semi long-term basis with funding renewed yearly, dependant of proposal agreements.

It is clear that when the issues a community faces are identified within the community, there is commitment to finding solutions. Further, when the Centre has core funding and a strong reputation for effective program and service delivery and the proposal game does not eat up valuable time and administration, then the actual impact of the delivery on the community is positive and moves forward.

Please see the attached documents for a list of Centres and their current status for additional information and available services.

THE ROLE OF THE ASSOCIATION OF FRIENDSHIP CENTRES

The Commission on First Nation and Métis People Justice Reform is looking at the issues that we as Aboriginal people face in Saskatchewan daily as we work towards creating a positive relationship within the province between the Aboriginal and non- Aboriginal citizens. These are the same issues the Friendship Centres have been looking at and dealing with since our creation. Although the problems faced are multi-dimensional and a number of processes will be required to create a healthier environment, we see that the Friendship Centres throughout the province have a continuing valuable role to play.

As the political field changes and as Aboriginal governments evolve and provincial and federal governments revamp and reevaluate their relationship with the Aboriginal community, the daily needs of Aboriginal people must continue to be filled in a consistent, professional way. As the traditional agency to work within community and with individuals, The Friendship Centres, when properly resourced, are the agencies to ensure there are always solutions for the social issues faced by Aboriginal people. We have a history of working with a diverse group of people not based on political relationships or status.

In developing a policy framework agreement with Saskatchewan, we are examining the need for core funding, stable programs funded on long term basis, enhancing our current menu of services and recapturing programs we have lost. This kind of a relationship with a funding agent will ensure the professionalism, proper training and stability which is required, not only for the organization but for the clients who require that kind of structure and consistency. The intention is to address issues of underfunding and understaffing concerns we face. It also eliminates the proposal cycle in an attempt to scramble for available dollars on a very short term basis just to keep a skeletal program agency alive.

The Friendship Centres must stay non-partisan in order to fulfill our mandate. Although we need a working relationship with the many Aboriginal organizations, being non-political should ensure that our funding is based on community need and not politics or status.

The Friendship Centres have approached all issues faced by Aboriginal people and low income people, as part of their entire life experience. To us this approach means that the people who are in need of assistance in one area of their life will also benefit by examining all of the issues in their life, from personal, educational, health, familial and communal. We know that not only the individual is impacted by a crisis but the family and the community is touched as well and therefore the range of services and programs available must reflect this. The term that captures this concept today is of course holism however, the reality of how this is achieved can be another factor compounding the already numerous problems faced by service providers. The benefit of being able to provide a number of services and a range of options will fall not only to the individual, but to the family, the community and to the institutional workers as well – who are often left with few or no options.

The range of who provides what services to the Aboriginal people of this province under the current provincial and federal schemes takes justice, education, health, sports culture recreation, employment, social, food and economic development. Each of these areas can be broken down again and those areas in turn have their own specialties. This is an expansive list which may or may not be specialized for Aboriginal people, and which is not community sensitive unless it is designed by the community.

Equal to the range of services to be provided are the people with whom they work. This range goes from unborn babies, children, teens, adults to Elders. It takes in individuals, community, community organizations and all the people who work within this sphere. A holistic approach takes all of this into account.

In addition to our philosophical approach to working with Aboriginal people we feel it is crucial that the use of traditional knowledge, spirituality be incorporated within contemporary resolution measures to deal with a wide variety of issues. This keeps the culture, language and traditions alive and it is an aspect that only Aboriginal program and service workers can provide. Further, although we work primarily with Aboriginal people, our status blind policy allows us to work with many people and to build an education component on Aboriginal traditions with our non-Aboriginal clients and contacts.

Through the networking developed by the various Friendship Centres with other organizations in the province there is an understanding of the climate in which service must be offered to meet the needs of the client, the system workers, the funding agent and the community at large. This is the expertise of the Friendship Centres.

PROBLEMS/CONCERNS

As an association which has worked with Friendship Centres for over 30 years, we have experience with the many growing pains which have impacted our development and our growth. Many or all of these problems are ones which Aboriginal organizations and individuals have experienced to some greater or lesser degree. The following is a list of the essential concerns identified. This list is not exhaustive, but will provide examples of what the problems are:

- Marginalization: although goals and objectives of each Friendship Centre are laudable we require more involvement or connection with non-Aboriginal community to actually create a multicultural society and to identify and deal with problems we face as a community. For example, one presence which is at the centre of your work is the police. The work done by the police within a family, and therefore a community must be done with an eye to the future and the development of the person's and the community's life. This can only be done if there is an education and an understanding of that person or that community, their history and all of the positive and negative factors involved. The police are but one of hundreds and even thousands of examples we could cite here.

- Due to the fact that we rely on minimal funding to function day-to-day and the fact that we are the family/community of the people we serve, we too are in constant reactive mode. As a result of this we are only able to scratch the surface of the problems faced by various quadrants of the province's Aboriginal population. This impact is significant and it undermines our ability to truly keep an eye on all aspects of a person's life and to deal with the entire person. We are also reliant on volunteers in many of the Centres, which has positive and negative aspects; we have dedicated people who truly know the issues and care about the outcomes, on the other hand, these people are expected to take on more and more as the needs increase and the result can be a crisis in their own lives. Volunteers are the backbone to Aboriginal communities and many are doing the work that other, government employees are paid to do.

- When we are left to react to crises the cycle of reaction starts in many areas of our program and service delivery. As we stated earlier, once we lose sight of the entire person and their needs because only enough time, people and money to deal with the identified crises then there is no opportunity to go beyond basic human needs to more participatory relationship within a community. The overwhelming issues that we as Aboriginal people face from history and from current reality of crises, racism, and violence prevent a move forward unless we are respected to look after ourselves.

- Minimal short-term funding, lack of human resources and makeshift infrastructure from space to office supplies all impacts on any institution's ability to deliver, effectively, its services. The Friendship Centres are no exception.

- In addition to minimal funding it is also granted on a short term basis and we suffer the "pilot project" problems that many others face. Long term core funding provided to the Centres based on sound accounting principles must occur. This funding needs to be tied to evaluation schemes which everyone knows in advance. Again, we apply for funding on a project by project basis and even when we know the project works, we wait with bated breath to see whether or not the program will continue. The problems with this are obvious – our staffing and administration fails, but worse our patrons come to rely on a service we cannot continue because the funding is simply not there. This situation also causes Centres to hire staff over an 8-10 month period rather than the full 12, dependent on when the funding is received. (Some Centres do not run the risk of retaining staff if they are not sure if the program will be extended as it does cause a loss of funding if they bridge finance a program and it is not extended).

- Evaluation of programs and services must be fair, include the funding agencies and the service providers. It must have a mechanism for review which honestly assesses what the impact of a program or service is, what the problems were and most importantly how it was successful and how it can be improved. We need an opportunity to participate in this kind of discussion and not to be constantly worried about what will happen year to year.

- The political atmosphere in which we operate can also impact on our daily operations. This includes federal, provincial and Aboriginal governments. The impact of federal and provincial governments is a concern for financing and the livelihood of the Centres. A new government can mean a change in direction, loss of interest and new personalities to deal with on the yearly or program based funding arrangements. Issues with the Aboriginal governments are more complicated. Since we are all facing the same financial issues, and further because we may all be slated into the same "Aboriginal funding" pigeon hole, we often end up proposing for the same dollars and since our funds are tied to whatever program the government decides to fund, our proposals will have very much the same profile and the same flavor. This pits Aboriginal governments against each other, even within First Nation or Métis community. There simply is not enough to go around, yet the problems are not decreasing and provincial programs are not impacting in any significant way on our levels of employment, incarceration or how long we are on the social services payroll.

SUCCESSES/BEST PRACTICES

Moving past the problems and concerns that the Friendship Centres of Saskatchewan face, we would like to emphasize our success and what we feel are the best practices which should be highlighted and built upon.

- We are Aboriginal people serving Aboriginal people. We are the community and should be the ones to identify specific needs for our community and how to set up a process to deal with those needs, in conjunction with what is available, creating what is not. This allows for the diversity which is essential for services delivery over an entire province;

- Culture, tradition and spirituality are at the centre of our organization and are key components to keeping the heritage alive. This is a service which should be provided by Aboriginal people. This is what allows us to include the entire person in any process to connect various people and services in a society and to create the relationship which is essential for community building;

- The Friendship Centres are non-political, non-partisan, status blind program and service provider, keeping the political issues to the political players and leaving service delivery to the community;

- The role of the Centres in education for both Aboriginal people and non- Aboriginal people aids also in community development;

- We see our role as one that extends from the individual, to the family and throughout the community. Any boundaries are artificial since the success and the problems of one sector spills into the next;

- Improvement of the lives of Aboriginal people in urban centres is our goal and its long term rewards are measurable in both economics – costs of incarceration and employment – as well as human worth –education, and participation in community building;
- We see youth as the key to the future and in addition to working with their families we build their confidence and aid them in making decisions for healthy life choices so that they can participate in their communities;
- We are located throughout the province and understand issues from North to South, East to West and urban and rural. We know that we are not dealing with the same culture, language or history for each of the Aboriginal groups. At the same time we understand that there is overlap and consistency with many issues which are found throughout the province;
- We are the primary program and service delivery agent for a very diverse Aboriginal population in Saskatchewan;
- We create a safe space for meetings for both Aboriginal people and mixed audiences which also adds to the creation of a larger community.

Two examples of where we have been successful with minimal dollars and an abundance of commitment are listed below. There are others but this provides some insight:

- An example of a Northern success, which shows what Centres can do in spite of the identified problems, would include the Ile-a-la-Crosse Friendship Centre Inc. This Centre runs 10 programs in the community, hosts an annual wellness and youth conferences, and employs 19 full time staff, 1 part-time and 4 casual and a host of volunteers. The revenue flowing through this Centre is approximately $1.2 million.
- As an urban Centre, the Saskatoon Centre shows a presence in the Community through its participation in local cultural activities, programs for youth, families, and touches on many areas of life including health, employment and social services. The programs and services are provided to over 4,000 people each year. Again, there are core staff and a number of people hired on contractual a basis, as well as volunteers.

IMPROVEMENTS/RECOMMENDATIONS

In order to take on the role that the Friendship Centre sees it can fill the following needs are highlighted from the above discussion:

- Long-term core funding to establish our body as the centre referral agency in addition to being a delivery agency;
- The ability to rely on a stable infrastructure, which is physical space, human resources and daily operating supplies;
- The recognition of Friendship Centres as the primary service provider for Aboriginal people in Saskatchewan and the advantage of their non-political, non-partisan approach to meeting the needs of individuals and communities;
- Establish a fair, inclusive, evaluation process for services provided which includes discussion of what works and why, what does not work and why- then ultimately how to proceed with that information.
- Long-term fee for service agreements, i.e. a 5-year court worker program.

CONCLUSION

When Aboriginal people can work with government in an effort to recognize that Aboriginal people want and need to take responsibility for their own people there will be real, visible, sustainable change for Aboriginal people in Saskatchewan. When the people whose lives are affected by government policy, are the ones consulted and involved in the process to restore health and wellness then there will be a move away from crisis management and towards Aboriginal participation at every level of society.

When frontline workers, like Friendship Centres, are part of the decision making process and our expertise is a recognizable commodity, then there will be an impact in the current statistical evidence faced by the citizens of this province. When we stop studying Aboriginal people as a societal problem, respect that we are responsible for our future, at the same time acknowledging the past, then there will be progress.

When we celebrate our contribution, our culture, our ability to participate and we are the example people look to for creating positive relationships and holding a process to deal with our growing pains, good and bad, then we will know that the Aboriginal people who live in Saskatchewan were not only listened to but were heard and are now part of the fabric of society without having to compromise our culture.

As the Association of Friendship Centres in Saskatchewan, we want to be part of this as we see it as a solutions oriented process. We see this as an ongoing long term process. We have the community presence and knowledge and the cultural expertise to be a key player in the creation of a new relationship between Aboriginal people and the rest of Saskatchewan.

Aboriginal Friendship Centres
AFCS
of Saskatchewan

Directory of Services
2003

Table of Contents

Aboriginal Friendship Centres of Saskatchewan 3
Urban Multi-purpose Aboriginal Youth Centres 5
UMAYC – 2002/2003 Projects 8
Saskatchewan Aboriginal Youth Council 12
Battleford Friendship Centre 15
Buffalo Narrows Friendship Centre 20
Ile-a-la-Crosse Friendship Centre 23
Kikinahk Friendship Centre 25
La Loche Friendship Centre 28
Moose Mountain Friendship Centre 30
North West Friendship Centre 26
Prince Albert Indian & Metis Friendship Centre 29
Qu'Appelle Valley Friendship Centre 30
Regina Friendship Centre 31
Saskatoon Indian & Metis Friendship Centre 32
Sipisishk Friendship Centre 35
Yorkton Friendship Centre 36

Aboriginal Friendship Centres of Saskatchewan

#606 – 224 4th Ave. S.
Saskatoon, SK.
S7K 5M5
AFCS Provincial Director: (306) 665-1264
UMAYC Regional Desk Coordinator: (306) 665-1267
Fax: (306) 664-6088
UMAYC: umayc@sasktel.net
Provincial Coordinator: afcs.pa@sasktel.net

Website: http://www.afcs.com

Incorporated as a Non-profit organization for almost 20 years the Aboriginal Friendship Centres of Saskatchewan replaced the Saskatchewan Association of Friendship Centres. With our corporate office located in Saskatoon the Aboriginal Friendship Centres of Saskatchewan continues to strive forward. Representing 18 Friendship Centres in the Province the Association is controlled by a board of directors consisting of 2 representatives and 1 youth representative from each participating Friendship Centre along with an elected Executive Committee.

Mission Statement:

The Aboriginal Friendship Centres of Saskatchewan's (AFCS) mission, is to promote, advocate for, and represent member Centres at the Provincial and National levels as directed by Centres, while respecting their autonomy, by sharing expertise, resources, exchanging ideas that will provide a forum to assist our Centres to carry out their mandate. To maintain this by respecting our Elders, helping Aboriginal peoples through Friendship, Harmony, quality service, Cultural integrity, Cultural Awareness and Sharing.

Aims & Objectives:

The objectives of the Aboriginal Friendship Centres of Saskatchewan are, in general, the promotion of the goals and objectives of its member Friendship Centres and the well being of the Aboriginal People of Saskatchewan, and specifically:

- facilitating communication and cooperation amongst all Centres within the Province of Saskatchewan
- provide information regarding the operation and development of Aboriginal Friendship Centres to the public and in particular to persons of Aboriginal ancestry
- to negotiate with federal, provincial and municipal governments on matters of concern to the member Centres, without depriving said Centres the right to negotiate on their own behalf

- to negotiate with related organizations on matters of concern to the member Centres, without depriving said Centres the right to negotiate on their own behalf
- to promote and assist the member Centres in their charitable and cultural activities
- to assist member Centres in Program Development
- to represent its member Centres at the National level, excluding the National Association of Friendship Centres Annual General Meeting (AGM)
- to develop the Corporation's activities as the need arises to continue support of its membership
- to assist member Centres with funding information, debt recovery plans, financial negotiation and networking.

AFCS Executive

From the Board of Directors an Executive Committee is elected. The Executive Committee is comprised of a President, Vice-President, Secretary/Treasurer, National Board Representative and a Youth Representative. The Youth Representative is elected by members of the Youth Delegation to the National Association of Friendship Centres Annual General Meeting. All executive positions are for 2-year terms with the exception of the Youth Representative, which is a 1 year term.

The current Executive Committee is comprised of the following individuals:

Name	Position	Representing
Winston McKay	President	Saskatoon Friendship Centre
Rae Liebel	Vice President	Green Lake Friendship Centre
Doreen Maurice	Secretary/Treasurer	Pinehouse Friendship Centre
Maurice Aubichon	National Board Rep.	Regina Friendship Centre
Ashley Norton	Youth Representative	Regina Friendship Centre

AFCS Staff

Paul Daigneault – Provincial Director

Vacant – Office and Program Manager

Laura Germs – Administration Assistant

Urban Multipurpose Aboriginal Youth Centres

UMAYC

Mission Statement

The Urban Multipurpose Aboriginal Youth Centres (UMAYC) Initiative is a five-year initiative (1998-2003) designed to provide urban Aboriginal youth with a wide range of culturally based programs, services and activities that are locally controlled and designed in conjunction with Aboriginal youth. These programs, services and activities will be structured in a manner that will empower Aboriginal youth to address the challenges they face and determine their own future with a sense of pride in a safe and culturally relevant environment.

The primary goal of the Urban Multipurpose Aboriginal Youth Centres Initiative is to create a network of urban Aboriginal youth centres to support and assist urban Aboriginal youth in enhancing their economic, social and personal prospects.

Guiding Principles

The Initiative operates under the following main guiding principles that it:

- will serve the needs of Aboriginal youth, ages 15-24 years, living in urban or northern communities with populations exceeding 1000 residents, regardless of status, culture or gender, and where circumstances warrant may include Aboriginal children and youth ages 10-14 years, or young Aboriginal adults ages 25-29 years
- will develop and implement Aboriginal community-driven plans, strategies and programs that focus on urban Aboriginal youth
- will enhance the capacity of Aboriginal youth to lead and manage the Initiative
- where possible, will not duplicate or replace, but build-on and complement existing Aboriginal, federal, provincial, territorial and local programs and services through partnerships and collaboration
- will operate according to generally accepted principles of prudent financial management and accountability, while at the same time allowing for an evolving management approach that learns from and shares successful, locally-based approaches; and
- will be managed through processes that are inclusive, transparent and accountable to Aboriginal youth and Aboriginal stakeholders, as well as the Minister of Canadian

- Heritage and the Aboriginal organizations responsible for funding administration for the Department of Canadian Heritage (DCH).

Program Objectives

The overall UMAYC initiative will:

- support and assist urban Aboriginal youth in enhancing their economic, social, and personal prospects, by providing financial support to community-level projects
- actively and meaningfully involve Aboriginal Youth in project design, development and delivery at all levels
- engage support and involvement of experienced Aboriginal service providers and of Elders
- focus on respect, awareness and support for preservation of Aboriginal cultures and values
- be inclusive to First Nations, Métis, and Inuit peoples, with an "open door" policy for all facilities and services to ensure accessibility for all groups
- recognize and make the most of available resources, but also recognize the value of physical settings, therefore supporting minor renovations on existing facilities
- coordinate and cooperate amongst all relevant service providers.

Program Focus

The community-level projects focus on a wide range of Aboriginal youth issues, needs and goals, such as:

- encouraging youth to stay in school
- increasing their effective participation in employment, skills development and training, and career counseling
- improving life skills, including parenting
- increasing youth participation in health, cultural and recreational projects
- creating activities that provide alternatives to negative environments;
- community outreach, and prevention and intervention programs for street youth; and
- strengthen positive ties of Aboriginal youth with others in the Aboriginal and non-Aboriginal community.

Program Requirements

UMAYC projects will require:

- involvement of Aboriginal youth in the design, development, operation, evaluation, and financial administration of the project

- a motion by the local Friendship Centre or sponsoring organization board supporting and endorsing the project proposal
- proof of incorporation, as a non-profit organization, and insurance
- a mission statement and objectives
- demonstrated past program delivery experience
- a detailed work plan, including anticipated end results
- a detailed budget of project expenditures
- a separate bank account, with properly constituted signing authority to receive and administer funds dedicated to the project;
- an appointed Aboriginal youth to approve all project expenditures
- an Aboriginal Youth Council/Committee to identify the needs and priorities of the local youth and provide primary direction for the project
- community support, ie. letters of support
- demonstration of how the project will endeavor to create local partnerships and seek additional funding; and,
- an evaluation process.

Program Components

- Sports and Recreation could include volleyball, lacrosse, hockey, canoeing, camping and fishing.
- Cultural Activities could include language classes, traditional drumming, and Elder's storytelling.
- Employment, Education, and Training could include job search skills, computer training, and tutorial services.
- Social and Health Programs could include peer counseling, life skills training, and parenting skills.
- Social Activities could include feasts, dances and socials, movie nights and camping trips.
- Youth Leadership could include Youth Council meetings, public speaking skills and group activities.
- Community Involvement could include community events and environmental/community cleanup.

Urban Multipurpose Aboriginal Youth Centres

2002 – 2003 Projects

Project Name: Multipurpose Aboriginal Youth Centre
Organization: Buffalo Narrows Friendship Centre
P.O. Box 189
Buffalo Narrows, SK. S0M 0J0
Phone: (306) 235-4633
Fax: (306) 235-5451
UMAYC Coordinator: Valmore Morin

This is a continuing UMAYC project. Cultural, recreational, social and educational activities will continue to be undertaken as well as activities to enhance and promote youth leadership, community, Elder, volunteer involvement will be planned and implemented for the project duration on a continual basis. Programs and activities will be scheduled for after school hours, evenings, weekends and on school closures.

Project Name: Sakitawak Aboriginal Youth Centre
Organization: Ile-a-la-Crosse Friendship Centre
P.O. Box 160
Ile-a-la-Crosse, SK. S0M 0C0
Phone: (306) 833-2313
Fax: (306) 833-2216
UMAYC Coordinator: Myra Malboeuf

This is a continuing UMAYC project. The Sakitawak Aboriginal Youth Centre will continue to be fully inclusive with an open door policy to all Aboriginal youth. Programs and services offered will be culturally sensitive and relevant. A forum has been established for Aboriginal youth to be comfortable with, and continue to offer peer support counseling services, which allows peers to provide and receive support. The Sakitawak Aboriginal Youth Centre will continue to have full involvement of youth in all aspects of program delivery and evaluation. The programming includes health promotion and social issues, cultural activities, sports and recreation, education and training, and youth leadership.

Project Name: Kikinahk Aboriginal Youth Activities Program
Organization: Kikinahk Friendship Centre
P.O. Box 254, 320 Boardman Street
La Ronge, SK. S0J 1L0
Phone: (306) 425-2051
Fax: (306) 425-3369
UMAYC Coordinator: Ernest Morin

This is a continuing UMAYC project. Kikinahk will continue to provide a recreation and cultural centre for community youth aged 15-25 with some programming earlier in the evenings for youth at risk that are between 10 and 14 years. The program will adhere to the UMAYC guiding principles and program guidelines, and continue to provide a holistic approach to the emotional, physical and mental well-being of local Aboriginal youth. Working with other programs at Kikinahk, they will provide a safe and healthy environment while continuing to integrate Elders and cultural teachers into UMAYC programming so that youth are aware of their cultural roots.

Project Name: The La Loche Dene Youth Project
Organization: La Loche Friendship Centre
P.O. Box 430
La Loche, SK. S0M 1G0
Phone: (306) 822-1778
Fax: (306) 822-1787
UMAYC Coordinator: Joanne Janvier

This is a continuing UMAYC project. By continuing to incorporate a holistic approach to program design and delivery, youth will have the opportunity to participate in activities geared towards a healthy balance in life. Each program planned will continue to encompass the four aspects of the holistic model, the emotional, the intellectual, the physical and the spiritual.

Project Name: "The Other Side" Youth Centre
Organization: North West Friendship Centre
P.O. Box 1780
Meadow Lake, SK. S0M 1V0
Phone: (306) 236-3766
Fax: (306) 236-5451
UMAYC Coordinator: Jessie Villeneuve

This is a continuing UMAYC Project. "The Other Side" Youth Centre will continue to provide education and training, sports and recreation, cultural, life skills/health and wellness programs, community initiatives and social activities for the youth of the community. This project will focus on Aboriginal youth aged 15-24 and also youth aged 12-14 who are considered to be at risk. With the Centre's open-door policy, no one will be turned away. The Youth Advisory Committee will meet monthly to identify the needs of youth and create specific programming to address those needs.

Project Name: Youth For a Brighter Future
Organization: Qu'Appelle Valley Friendship Centre
P.O. Box 240
Fort Qu'Appelle, SK. S0G 1S0
Phone: (306) 332-5616
Fax: (306) 332-5091
UMAYC Coordinator: Wendy Whitebear

This is a continuing UMAYC project. The Youth for a Brighter Future will continue to provide empowerment, opportunity and equality for the aboriginal youth within the community and area. The Aboriginal youth not only have a voice in the community, but they are informed about what issues are being addressed at each level. The program is designed and is implemented by the aboriginal youth in the community with educational, social, employment, recreational and cultural initiatives that have been self-identified with program relevancy.

Project Name: Yorkton Multipurpose Aboriginal Youth Centre
Organization: Yorkton Friendship Centre
139 Dominion Ave.
Yorkton, SK. S3N 1S3
Phone: (306) 782-2822
Fax: (306) 782-6662
UMAYC Coordinator: Nola St. Pierre

This is a continuing UMAYC project. The Yorkton Multipurpose Aboriginal Youth Centre will continue to offer educational, recreational, cultural and social activities to Aboriginal youth in the community aged 12-24. Educational activities will include a tutoring program for youth. Recreational activities will include participating in sporting activities and games. The cultural activities include inviting Elders to the program to teach the youth about their culture and traditions. Social activities will include cooking classes and dances. A Youth Advisory Committee has been established to provide input and direction on the youth centre and its programming.

Project Name: Saskatchewan Aboriginal Youth Council (SAYC) Project
Organization: Aboriginal Friendship Centres of Saskatchewan
#600-224 4th Ave. S.
Saskatoon, SK. S7K 5M5
Phone: (306) 665-1267
Fax: (306) 933-4633
UMAYC Coordinator: Ashley Norton

This is a continuing UMAYC project. The SAYC will continue to provide youth with the means, methods and resources to give some direction over their own future to governing organizations, funding organizations and the general public. By having quarterly meetings and a workshop, the project will continue to strive to keep youth informed of the programs, projects and activities available to them throughout the province. It will also provide a forum for youth to join together and make recommendations to governing organizations regarding the needs and the wishes of today's youth.

Project Name: "A Busy Mind is a Healthy Mind"
Organization: Sipisishk Friendship Centre
P.O. Box 19
Beauval, SK. S0M 0G0
Phone: (306) 288-4747
Fax: (306) 288-2236
UMAYC Coordinator: Stella Laliberte

This is a new project that will include activities such as sports and recreation, cultural, employment, education & training, social and health programs, social activities, youth leadership and community involvement. This project will benefit the youth of Beauval and surrounding communities that make up approximately 60% of the population. A youth committee has been formed to help identify, design, develop and work with youth on after-school/evening programming, personal development and leisure/recreation programs in the community.

Project Name: Battlefords Urban Aboriginal Youth Centre
Organization: Battlefords Friendship Centre
960 103rd Street
North Battleford, SK. S9A 1K2
Phone: (306) 445-8216
Fax: (306) 445-6863
UMAYC Coordinator: Sheldon Fiddler

This is a continuing UMAYC project. The Battlefords Urban Aboriginal Youth Centre will continue to provide educational activities that deal with career research, and field trips to educational institutes as well as recreational activities such as the Outdoor Hockey League. Other activities include a Video/Drama Project and Innovative Arts. Life skills activities include evening sharing circles, young mothers support group, young men's group, working towards employment and the self-discovery project.

Saskatchewan Aboriginal Youth Council

Mission Statement

The Saskatchewan Aboriginal Youth Council's mission, is to promote, advocate for and represent youth locally and provincially as directed by their centres, while representing their autonomy, by sharing expertise, resources, exchanging ideas that will provide a forum to assist our youth to carry out their mandate. To maintain this by respecting our Elders, helping Aboriginal Youth through Friendship, Harmony, Quality Service, Cultural Integrity, Cultural Awareness and Sharing.

Aims and Objectives

The objectives of the Saskatchewan Aboriginal Youth Council is to empower our youth by developing programs that are youth oriented and making a stronger voice for the Saskatchewan Youth in the Friendship Centre movement.

The SAYC Executive Committee

Youth Executive
Ashley Norton – Regina Friendship Centre

President
Skyler Whitefish – Battlefords Friendship Centre

Vice President
Vacan – Saskatoon Indian & Metis Friendship Centre

Treasurer
Gerid Coates – Qu'Appelle Valley Friendship Centre

Secretary
Justina Lemaigre – La Loche Friendship Centre

Role of the SAYC Executive Committee

The Youth Executive shall:

- represent the interests of the youth to the AFCS Board of Directors and the AFCS Executive Committee;
- act as liaison between the AFCS, the SAYC and the NAFC Aboriginal Youth Council and;
- represent the SAYC to the public when requested to do so.

The President will:

- act as a spokesperson for the SAYC;
- represent the SAYC to the public when requested to do so;
- be an ex-officio member of all sub-committees;
- be responsible for the coordination and delegation of tasks associated with fulfilling the objectives of the SAYC.

The Vice President will:

- assume the responsibilities of the President, Secretary or Treasurer in his/her absence;
- assist in the duties of the President when requested to do so;
- perform other such management duties as delegated by the Youth Committee or Executive Committee and;
- represent the SAYC to the public when requested to do so.

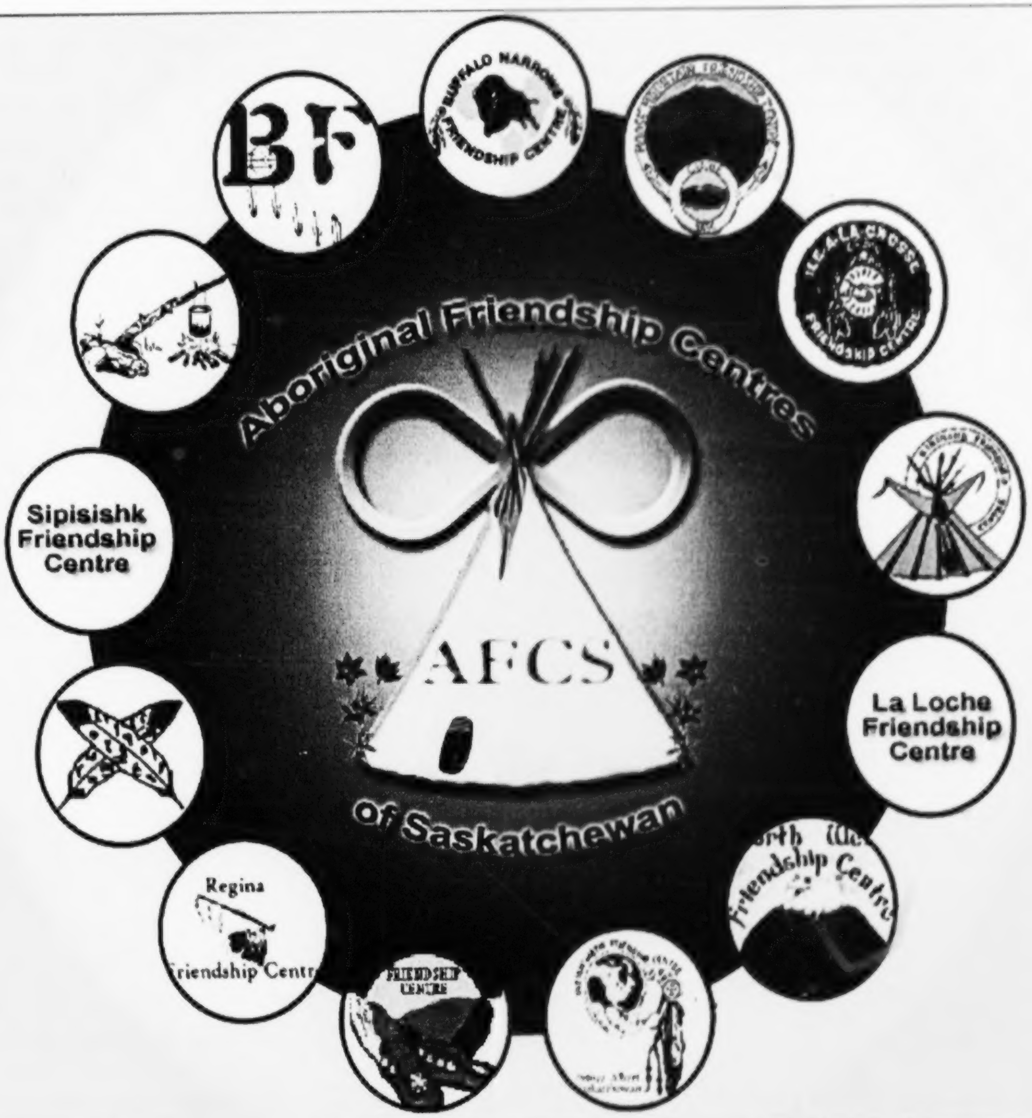
The Treasurer will:

- assume the responsibilities of the other Executive members in his/her absence;
- perform administrative duties as delegated by the Youth Committee or the Executive Committee and;
- represent the SAYC to the public when requested to do so.

The Secretary will:

- keep accurate minutes of all meetings and disbursements of such minutes to the Youth within the member Centres;
- be responsible for the distribution of meeting notices, special resolution notices and vacancy notices within their respective time frames and;
- perform administrative duties as delegated by the Youth Committee or the Executive Committee and;
- represent the SAYC to the public when requested to do so.

Friendship Centres of Saskatchewan


Aboriginal Friendship Centres
AFCS
of Saskatchewan
BF
Buffalo Narrows Friendship Centre
Ile-a-la Crosse Friendship Centre
Sipisishk Friendship Centre
La Loche Friendship Centre
Friendship Centre
Regina Friendship Centr
Friendship Centre

Battleford Friendship Centre

960 - 103rd Street
North Battleford, SK.
S9A 1K2
Phone: (306) 445-8216
Fax: (306) 445-6863
E-mail: nbfc@sasktel.net

The Battlefords Friendship Centre (BFC) has been in existence since 1960, one of the first Aboriginal Friendship Centres in Saskatchewan. In March 2000, the BFC celebrated its 40th Annual All Native Hockey Tournament, the longest running event of its kind in Western Canada.

In the beginning the BFC provided referral services to Aboriginal city residents, most often these people were directed to the existing social service agencies. Later the Friendship Centre began to take a more active role in service delivery and many counseling services were initiated to assist Aboriginal people in such areas as employment, housing and the justice system, to name a few. The BFC designs and implements programs which address the specific concerns of the local population.

The nature of this mandate calls for widely diversified programming, with the centre offering services such as social service referrals, community and economic development projects as well as many services such as daycare and drug and alcohol counseling which fill the gaps in or replace the existing social service structure in many areas. Many of these services provide Aboriginal residents with meaningful alternatives.

Board Members

Name	Position
Billy Kennedy	President
June Ernest	Vice President
Calvin Thunderchild	Treasurer
Becky Trotchie	Secretary
Alisha Flamond	Youth Director
Brian Amyotte	Director
Jenifer Kiskotagen	Director
Eileen Kiskotagen	Director
Helen Trotchie	Director
Brian Beaudry	Director

Staff Members

Name	Position
Jackie Kennedy	Executive Director
Laura Ruby Stade	Bookkeeper
Pamela G. Ruba	Secretary
Betsy Flamond	Food Bank Coordinator
Sheldon H. Fiddler	Youth Program Coordinator
Terence A. Landrie	Activity Coordinator
Leon J. Kennedy	Youth Leadership Program Coordinator

Nichelle Belanger Director

Programs

Urban Multi Purpose Aboriginal Youth Centres

A meeting place where youth can come and have fun while learning about their heritage, history and culture through games and other types of activities. Youth are encouraged to develop long-term goals and objectives for themselves including staying in school.

Drop In Centre

A meeting place for clients and members to come and relax, learn, access services from other agencies and participate in a wide range of activities. These activities range from workshops to meeting a friend for coffee.

Bridging to Employment Program

After reviewing the past two Bridging to Employment Program, the Board of Directors decided that there needed to be some fine-tuning of the program before it went to CanSask Employment Centre for funding of its third program.

Renovations to the main floor of the Centre in the fall and spring of this fiscal year has made it possible for us to have a classroom away from the general public where the participants can begin training. We are currently working on an application for the fall of 2002 in which we will be working with a larger number of employers including the Gold Eagle Casino.

Aboriginal Literacy Program

The Aboriginal Literacy Program is currently underway in partnership with the North West Regional College. We have found that the literacy level of the students from the Bridging to Employment program and our clients continue to be an issue. In the spring of 2001, the North West Regional College hosted a tutors training session in which our staff participated.

Employment & Training Services

The Battlefords Indian Metis Friendship Centre, Inc. has found that our clients need to be treated as a whole person and not a stat. When our clients come to us they may be looking for work but in reality they have no money, no food and no roof over their head or child care for their children. We can help them search for work but that won't last because they are hungry, they have no childcare and have no home to go to. We have found that unless we work with the "whole" person finding a job today will mean finding another one tomorrow for the same individual.

We have developed a portion of the Centre that is devoted to informing clients about employment and training opportunities within our community and other areas of Saskatchewan and Canada. Many if the clients do not have access to computers or do not have resumes thus making their job searching that more obtainable. In response to this we have two of our staff that are able to interview an individual and make up or update a resume for them. We have also established a job centre that is kept current with the latest job opportunities. We are actively working to obtain computers that we can network with the internet thus expanding our client's ability to find work.

Flea Markets

The Centre hosted Flea Markets from September through December, 2001 with between 5-7 participants weekly. This event was hosted each Saturday at the Centre.

Due to the demand from participants, we have once again started the Flea Market and will run every Saturday from 9:00 - 2:00 p.m. consecutive through until the end of December.

North West Territorial Days

During the North West Territorial Days, we will operate our concession booth on the exhibition grounds utilizing our staff and any volunteers who come forward. We will once again be serving everything from bannock burgers to Indian tacos.

Cultural Sharing Program

After our summer experience with the Cultural Sharing & Survival Camp, we wanted to duplicate this program in an urban setting for out youth who were unable to participate. For two six week period from October, 2001 to January, 2002 we expanded our summer partnership and provided a Cultural Sharing Program. The program empowered youth to learn about their history, their heritage and their culture. The program also saw youth gain greater self-esteem and respect for others. We are actively working to develop this program in an education format that our schools will be able to use.

Much Music Dance

On August 30th, 2002 the Centre will be hosted a dance at the Agrivilla, which was open to youth and adults. We have found the Battlefords there are very few activities for youth and young adults.

Wrestling

On September 21st, 2002 the Centre will hosted the First Nations' Wrestling Alliance event. The goal of the event was to challenge our youth by empowering them to challenge the boundaries of their dreams but most importantly to build their self-esteem and confidence by promoting having fun in a healthy environment.

Thanksgiving Supper

Thanksgiving comes but once a year but for many of our members and their extended families, the Thanksgiving holiday is nothing but just another meal of little or nothing. The Centre's Board of Directors, staff and volunteers worked extra hard this year to ensure that 2001 would not be just another holiday but one to be remembered. From turkey to ham and all the traditional Thanksgiving meal items, the 200 individuals who participated enjoyed a traditional Thanksgiving meal, which was followed by a short program.

Halloween Dance & Fun Night

On October 31st, 2001, the staff dressed up the Centre to be a haunted house and opened their doors to young people of all ages from the Battlefords. Squeals of delight could be heard from every corner of the Centre with over 105 youth going through the haunted house. This followed by a costume dance that saw an additional 75 youth joining in. The whole event turned out better than expected and the Board of Directors were pleased with their cooperation the staff demonstrated while working together.

Open Hockey Tournament

In cooperation with the Gold Eagle Casino, the Centre will be hosting an "open" hockey tournament in November, 2002 allowing the many talented hockey players within the aboriginal and non-aboriginal community to compete in an open and friendly sporting environment. The event minimum of 16 teams participating.

Christmas Party

We held a Christmas Party on December 23rd, 2002, with over 275 in attendance. The staff volunteered their time to prepare and serve the supper. Here again we are pleased to see the number of participants who turned and enjoyed this event.

Children's Christmas Party

We held our annual Children's Christmas party on December 16th, 2001, with approximately 250 children in attendance. Once again the North Battleford Youth Centre provided the wooden toys, and the Gold Eagle Casino held a toy drive and donated a generous amount of toys for all the kids. This event has proven to be a win-win situation for us.

38th Annual All Native Hockey Tournament

The 38th Annual All Native Hockey Tournament was held on March 28, 29, &30th, 2002 with invitation going across Canada.

The Gold Eagle Casino / Saskatchewan Indian Gaming Authority have made a commitment to assist in the sponsorship of this event. As in past years we will canvassing local business for funding / sponsorships.

Sports Days

This is a three-day event that allows slo-pitch and soccer teams to play for a prize package totaling $6,000.00 Teams from all over Canada will be invited to participate and we are expecting the number of soccer teams to double if not triple.

Aboriginal Healing Foundation

-Battlefords Aboriginal Historical Society
-Residential School Curriculum Development

The Battlefords Aboriginal Historical Society saw the development of a publication about our First Nation and Metis community and the impact of residential schools on their lives. Primary focus has been placed on veterans who served Canada in the armed forces. Once the publication has been produced it will be sold and the profits there will be used in the development of a museum of "artifacts" reflecting the First Nations and Metis community's history. After contacting a number of museums, we have learned they do have a large number of artifacts that originated from the Battlefords and north west Saskatchewan. It is our intent to develop a facility that will not just store these items but display them in a manner that our children, grandchildren and visitors to learn from.

In cooperation with the Battlefords School Division #118 and North West Roman Catholic Separate School Division #16, we have completed the students and teacher's manual for K-9. We are presently working on promoting the publications to other schools and educational facilities in Saskatchewan and Canada. With the profits realized from the sales of this publication, we will be able to begin the development of the final three modules. In the summer of 2002, we will be forwarding the second year funding request to the Aboriginal Healing Foundation to assist in the completion of this project.

Food Bank

In cooperation with the Battlefords Food Bank, Inc. the Centre provides services for clients in the way of food items donated by local businesses.

Buffalo Narrows Friendship Centre

Box 189
351 Buffalo Street
Buffalo Narrows, SK.
S0M 0J0
Phone: (306) 235-4633
Fax: (306) 235-4544
E-mail: bnfc@sk.sympatico.ca

The Buffalo Narrows Friendship Centre was incorporated according to the provisions of the Non-Profit Corporations Act (Saskatchewan) on August 22, 1984. It is governed by a President and eight member board that is responsible for the overall operation of the Friendship Centre programs and projects. The Friendship Centre is located in the Northern Saskatchewan community of Buffalo Narrows. Buffalo Narrows has a population of fourteen hundred people, the majority of whom are of Aboriginal ancestry. The service activities carried out by the Friendship Centre since being incorporated are designed to promote existing solutions to the socio-economic problems facing northern residents, as well as providing cultural, recreational, educational and social programs and activities for all ages on an ongoing basis.

Programs

Urban Multi-purpose Aboriginal Youth Centre Program

Our Mission is to improve social, cultural, traditional, recreational and educational programs and activities which will ensure a better quality of life for all youth in Buffalo Narrows and surrounding communities.

Our target group are aboriginal youth aged 12 to 24. We continue to implement programs and activities that will enhance and promote youth leadership, community, elder and volunteer involvement.

Teen and Young Parent Program

The objective of this program is to provide direct support to pregnant young women and young parents and their children, including pregnancy counseling, parenting support, life skills and education, and vocational counseling.
Teen and young parent services include, but are not limited to:

- counseling to birth parents about life choices

- assistance in obtaining adequate housing
- encouragement in attaining independence and keeping appointments (medical, school, etc.)
- teaching self-control
- teaching proper personal hygiene
- encouragement to become involved in positive social and recreational activities
- act as advocate or liaison between teen parent and other agencies
- assist with short and long term vocational planning
- assist in developing and understanding of the stages of child development
- teach new parenting skills and methods of child care

The Aboriginal Head Start (AHS) Program

The Aboriginal Head Start Initiative continues to be successful with an enrollment of 40 students aged 3 to 4 years old with a wait list of six children. The parental and family involvement within the program has expanded in the past year. The sponsor Board of Directors, the Parent Advisory Committee and the staff collaborate to deliver the program ensuring the six components, culture and language, parental involvement, education and readiness, social support, nutrition and health promotion, are met. Community elders are brought in to the preschool on a regular basis. Field trips take place at least once a month thanks to parents, grandparents and elders who volunteer. Another successful program in our preschool are the Come Read With Me Program which promotes reading at home.

General Services

Other programs offered by the Buffalo narrows Friendship Centre Inc. include:
Career and vocational counseling, cultural, educational, recreational and social activities for the whole community, referrals, assistance and completion of various forms, a drop in centre for all people, promoting wellness in the community, hosting various annual events, providing financial, in-kind donations and support for those in crisis, fax, photocopying and computer access free of charge, monthly cribbage tournaments, elders gatherings and parties, dances, fish derbies, bingo, square dance lessons, seasonal parties for youth, cultural days, camping trips, hockey tournaments, soup & bannock every Wednesday.

Buffalo Narrows Friendship Centre Inc. continues to be the primary service agency in the community with a steady flow of traffic, so if you are ever down our way, stop in for a fresh cup of coffee.

Board Members

Name	Position
Alvin Chartier	President
Janet Clarke	Vice President
Cynthia Morin	Treasurer
Louis Chartier	Elder Rep.
Tara Petit	Youth Rep.
John Young	Board Member
Floyd McCallum	Board Member
Bruce Clarke	Board Member
Marjorie Hanson	Board Member

Staff Members

Name	Position
Estelle Laliberte	Executive Director
Karen McCallum	Programmer
Tammy Clarke	Secretary
Nancy Hartley	Teen Parent Worker
Valmore Morin	UMAYC Coordinator
	UMAYC Coordinator
Bev Norton	AHS Director
Rose Shatilla	AHS Teacher
Verna Chartier	AHS Teacher Asst.
Angel Chartier	AHS Teacher Asst.
Pauline Aubichon	AHS Cook/Cleaner
Ken Bouchard	AHS Driver/Maintenance
Ramona Hartley	AHS Liason Worker

Ile-a-la-Crosse Friendship Centre

Box 160
Lajeunesse Ave.
Ile-a-la-Crosse, SK.
S0M 1C0
Phone: (306) 833-2313
Fax: (306) 833-2216
E-mail: ilx.friendctr.inc@sk.sympatico.ca

The mission of the Ile a la Crosse Friendship Centre is "To provide referrals, information, social, cultural, health awareness and recreational programs which insure a better quality of life for the people of Ile a la Crosse and surrounding areas."

The Ile a la Crosse Friendship Centre was officially incorporated in 1992, after the community realized that a pressing need for a social development centre existed. The local people quickly realized the challenge and the fact that there was no social development plan and that it would take a lot of commitment and support to this effort of self help.

Immediately, the community began renovating an old theater at a cost of $180,000 (one hundred and eighty thousand dollars from local fundraising). In the years since incorporation, the Friendship Centre has played a lead role in accessing, initiating and implementing a multitude of projects and programs which have proven to be beneficial to the residents of Ile a la Crosse and surrounding communities.

Programs

Aboriginal Healing Foundation

The Aboriginal Healing Foundation has a number of Outdoor Wellness conferences for men, women and elders throughout the summer months. They are also planning a Residential School Reconciliation retreat in June 2002. There are also other events planned such as community gatherings, sweat lodge ceremonies, weekly prayer meetings (Tuesday evenings), support group meetings weekly for men and women. This program will be ending on August 31st of this year unless funding for the program gets re-approved.

Urban Multipurpose Aboriginal Youth Centre

The UMAYC have daily activities planned for the youth including such things as Homework help, Simply Accounting training, Rising Stars Karaoke Club, Craft Classes, bowling, swimming, movies and golfing. They have also sponsored events like Horse Sleigh rides, minicarnival, Floor Hockey and Basketball Tournaments, and co-sponsored other events with the Sakitawak Recreation, RCMP and the Rossignol School.

Canada Prenatal Nutrition Program

The Prenatal Nutrition Program is planning a gardening project for their clients along with all the other activities that are usually offered such as workshops on various topics, home visits, cooking classes and support group meetings.

Board Members

Name	Position
Freida Fineday	Chairperson
Peter Willier	Vice Chairperson
Janelle Roy	Secretary/Youth Rep.
Alex Laliberte	Treasurer
Raymond Laliberte	Board Member
John Daigneault	Board Member
Brian Ratt	Board Member
Marie Adele Desjarlais	Board Member
Peter Raymond	Board Member

Staff Members

Name	Position
Yvone Daigneault	Executive Director
Jean Merasty	Asst. Programs Admin.
Yvonne Gauthier	AHS – Director
Nora Corrigal	AHS – Teacher
Louise Laliberte	AHS – Teacher Asst.
Anna Bouvier	AHS – Teacher Asst.
Victor Iron	AHS – Driver/Maint.
Karen Durocher	AHS – Cook/Janitor
Barb Burnouf	Prenatal Program - Coordinator
Jessy Corrigal	Prenatal Program - Asst. Coordinator
David Corrigal	Youth Support Worker
Liz Durocher	AHF – Project Manager
Don Favel	AHF – Asst. Manager
Tanya Aramenko	Court/Justice Worker
Myra Malbouf	UMAYC – Director
Valerie Gardiner	UMAYC – Asst. Director
Kirsten Gardiner	Summer Student
Tina Gardiner	Summer Student
Darren Gardiner	Summer Student
Lisa Durocher	Summer Student
Cynthia Daigneault	Summer Student
Kendal Durocher	Summer Student

Kikinahk Friendship Centre

Box 254
320 Boardman Street
La Ronge, SK.
S0J 1L0
Phone: (306) 425-2051
Fax: (306) 425-3359
E-mail: kikinahk@rongenet.sk.ca

Kikinahk Friendship Centre Inc. gradually grew from a community service group which began in late 1976 under the name Neginuk Friendship Centre. Over the years the Centre has grown to occupy (since 1986) a large building (13,000 sq. ft.) on Boardman Street in La Ronge with a gym, cafeteria, boardroom, several offices, preschool and a craft/activities room. The Centre began with the simple mandate of being a youth activity centre with emphasis on recreation.

Today, Kikinahk is a credible and integral part of the communities that together make up greater La Ronge. This includes the Town of La Ronge, Village of Air Ronge, and the Lac La Ronge Indian Band whose borders interact throughout these communities. It is proud to be a Multicultural Organization that provides social, recreational and business services to the entire community.

Kikinahk's mandate includes the following list of goals and objectives:

1. To provide a cultural centre for Indian, Metis, and non-status Indian persons;
2. To directly provide social welfare services to Aboriginal people through drop-in and phone-in counseling, resource and referral service;
3. To provide a recreational centre to persons of all ages, without discrimination, in La Ronge and area, through provision and sponsoring of recreational activities;
4. To develop programs which enable persons to gain self-confidence and leadership skills;
5. To provide a community focus for relations between Native and non-Native persons;
6. To provide job training skills and opportunity for employment for Native people.

Programs

After School Program: This program runs daily throughout the school year after school is out. Both the primary and secondary school are within one block of Kikinahk, and children are invited to come after school and have a snack, do a craft, or play in the gym.

Life Skills Training: Our Teen Parent Worker is a life skills coach and teaches various clients the intricacies of doing things in their daily lives. In addition we have:

Living Skills Training: whereby clients are taught how to cook small nutritious meals for their families (using our café kitchen) or how to sew (using our eight sewing machines).

Baby Sitting and Bus Driving: are provided free of charge for our clients when taking any of the classes provided.. The children are looked after in our gym, family room, or allowed to play in our playground.

Teen Parent Worker: This worker assists teen parents with the problems of life including providing instruction in the 'Nobody's Perfect" program. She works as a team in providing previously mentioned classes.
Family Service Worker: provides needed support and intervention for families that are having trouble in their lives. This may include finding adequate housing, facilitating family visitations and dealing with government agencies on clients behalf.

Mediation Diversion: Our worker works with the Courts, Police, Crown Prosecutors, Victims and Accused in mediating an agreement between injured parties. While our program deals primarily with youth's in trouble with the law, we do accept adult referrals also.

Headstart Preschool: This program funded by Health Canada allows this center the opportunity to enroll thirty children that are three and four years old. Operating four days a week, our center picks these children up at their homes and brings them to our center for a structured pre-school program. This program includes provision of an early breakfast and lunch, and a morning and afternoon snack. Our three teachers, (soon to be four) have structured classes that allow our children to learn both English and Cree letters, words, songs, and activities. A craft period is also included, as well as playtime in either the playground or the gym. Parents of these children are required to assist with the program at times, and to enroll in the Living and Life skills classes that we also offer. For those families with other children at home that are not included in this program, baby sitting is provided.

Prenatal Nutrition Program: This program funded by Health Canada allows us the opportunity to assist pre and post natal women with ensuring that they follow nutritious practices while pregnant, and later while nursing the baby. This program offers counseling and intake services to determine whether any of the mothers or babies are at risk, and provides supplements (milk coupons or vitamins) determined to be so. In addition our program provides nutrition classes, and mothers and their families are encouraged to enroll in our Life and Living skills classes in order to learn, socialize, and become prepared for the future.

Recreation Programming: We have year around programming for recreational activities at our center. This includes structured volley ball and floor hockey in the gym, and activities away from the center. Through the use of Kikinahk's bus and two minivans we are able to transport staff and participants to various locations around town. This year Kikinahk has given it's gym a face lift, we have added new flooring and a coat of paint to our gym. During the school year we normally add three extra recreation persons and have the center open until 10 p.m. most evenings.. Friday nights we offer free Teen dances for local youth, and are open until midnight.

Cafe and Catering: The entire community uses our center for various activities including Conferences, Meetings, and Weddings. This center provides fine cooked meals, (regular and traditional) for groups of 40 to 500 . Revenue generated through our food and liquor service is returned to the community through provision of other programs such as the After School Program.

Alcoholics Anonymous: Meetings twice per week on Wednesday evenings and Saturday evenings.

Narcotics Anonymous: Meetings on Tuesday evenings.

Sewing classes: Held on Tuesday evenings.

Youth Outreach Worker: Works with the teens of our community on "street" level.

Parents of Teens Program: This includes our Program coordinator and a grandmother and grandfather who will work with teens and their parents to foster better and healthier family lifestyles.

Board Members

Name	Position
Lloyd Robertson	President
Calla Gordon	Vice President
Glen La Fleur	Treasurer
Stan Dugan	Board Member
Karen Kilgour	Board Member
Karen Sanderson	Board Member
Jason Madsen (Youth)	Board Member

Staff Members

Ron Woytowich	Executive Director
Moses Bird	Elder
Mary Bird	Elder
MaryAnne Dumais	Executive Secretary
John Bronn	Bookkeeper
Ian Bonter	Operations
Candl Ratt	Headstart Coordinator
Laureen Spence	Headstart Teacher
Florence Charles	Headstart Teacher

Staff Members continued..

Name	Position
Jean Halkett	AfterSchool Program
Flora Roberts	Prenatal Coordinator
Regina Poitras	Prenatal Assistant
Adele Rivard	Alternative Measures Coordinator
Maureen Mckay	Teen Parent Worker
Sonia Roy	Family Service Worker
Ernest Morin	UMAYC Coordinator
Jason Brooks	Youth Outreach
Hannah Charles	Parents and Teen Coordinator
Solomon Ross	Evening Recreation Program
Caroline McKenzie	Evening Janitorial
Charmaine Bird	UMAYC Evening
Jeff Irvine	Youth Programming
Nicole Charles	Youth Prog./Babysitting
Susan Keighley	Bus Driver
Joanne Powder	Youth Programming
Michael Kunitz	Youth Programming
Georgina Sanderson	Youth Programming
Sheldon Landry	UMAYC Programming

La Loche Friendship Centre

Box 430
La Loche Avenue
La Loche, SK.
S0M 1G0
Phone: (306) 822-1772
Fax: (306) 822-1787
E-mail: laloche.fc@sk.sympatico.ca

In 1997, the La Loche Community Development Corporation re-initiated the dialogue to access friendship centre programs and services for La Loche. The CDC provided staff, funding, expertise, supplies, meeting rooms and extensive volunteerism, free of charge, for the communities' guest to access funding for a friendship centre.

The La Loche Friendship Centre was incorporated in 1997 and became a partner organization in the delivery of program and services in La Loche. A volunteer management committee began the process of developing terms of reference, bylaws and constitution, policy, procedures and structures, under the direction of the FC Board.

In 1998 satellite funding was provided to La Loche through the Buffalo Narrows Friendship Centre to offset the costs of a program coordinator. In 1999 – 2000, the La Loche Friendship Centre was granted access to funding available in the province through the Aboriginal Friendship Centres of Saskatchewan, finally, an opportunity to provide program and services to the community of La Loche.

During 2000 – 2001, the La Loche Friendship Centre, along with all friendship centres in Saskatchewan, accessed funding through the National Association of Aboriginal Friendship Centres to offer the Urban Multi-purpose Aboriginal Youth Centres program to our community. Once again, the La Loche Community Development Corporation was instrumental in the success of the acquisition of the program by providing program development support and expertise. The La Loche CDC also provides building space, as there are no facilities to rent in our community.

Being a member of the Provincial and National Friendship Centre movement has brought many opportunities to the community of La Loche. Friendship Centre funding has created employment, provided training, facilitated community consultation for direction, provided equipment for youth projects and has provided access to other aboriginal organizations striving towards the same goals.

Program Information Coming Soon...

Board Members		Staff Members	
Name	Position	Name	Position
Deborah DeCaux	Board Member	Viviane Janvier	Executive Director
Pauline Fontaine	Board Member	Joanne Janvier	UMAYC Coordinator
Greg Hatch	Board Member		
John Hiebert	Board Member		
Emile Janvier	Board Member		
JJ Janvier	Board Member		
Randy Janvier	Board Member		
Jim Lemaigre	Board Member		
Armand Murray	Board Member		
Bernice Park	Board Member		

Moose Mountain Friendship Centre

Box 207
318 Railway Ave. W.
Carlyle, SK.
S0C 0K0
Phone: (306) 453-2425
Fax: (306) 453-6777
E-mail: moosemntfc@sk.sympatico.ca

History & Program Information Coming Soon…

Board Members		**Staff Members**	
Name	Position	Name	Position
Rod McArthur	President	Laurie Bigstone	Executive Director
Claudette Parisien	Vice President		
Cindy McArthur	Secretary		
Dwayne Bigstone	Treasurer		
Sean Hamilton	Board Member		
Rose McArthur	Board Member		
Shianne McArthur	Board Member		
Hon. BM Ron Paul	Mayor of Carlyle		
Hon. BM Roberta Littlechief	Councilor WBFN		

North West Friendship Centre

Box 1780
205 Centre Street
Meadow Lake, SK.
S0M 1V0
Phone: (306) 236-3766
Fax: (306) 236-5451
E-mail: mlkfc@sk.sympatico.ca

The Northwest Friendship Centre has been in existence since 1971. It began as a drop in centre for people of native ancestry and others who could come together to meet and socialize in an atmosphere where all were equal and accepted. In 1973, NWFC was registered under the Societies Act and in June of 1981, incorporated under the Non Profit Corporations Act. Within the centre there are many programs that experienced another great year of success during the last 12 months. They are programs that are working together to create a better lifestyle and environment for our clients.

Programs

Family Worker/Teen Young Parent Program

This program is designated to provide family counseling, money management and budgeting workshops, effective parenting workshops, family crisis services, trusteeship and referrals. The Teen and Young Parent program is funded through Saskatchewan Social Services and offers clients individual/family counseling, life choice counseling for expectant parents, relationships, personal hygiene, budgeting, parent support meeting etc. Judy Ross, who is the counselor for this program, is also sitting on a number of interagency committees in our community. This assists her in respect to what is happening within other organizations and agencies. This program helps put on annual events at the Friendship Centre such as Halloween parties, children's Christmas party etc. through the services of parents/clients as volunteers. In the past the coordinator has also sponsored various workshops dealing with all aspects of families and relationships.

Healthy Babies Right From the Start

This program is funded through Health Canada. The program started in July 1995 with respect to a combined live birth data survey that identified that 6.44% of all births in the NQ Health District are considered to be low birth weight, which at this time is the highest rate in the province. Low birth weight and prematurity are the predominant risk factors contributing to infant morbidity and mortality. The program focuses on at risk pregnant women, who are most likely to have unhealthy babies because of poor nutrition and overall health. Priority is given to women living impoverty, pregnant teens, women who drink or use drugs, women living in violent situations or those diagnosed with diabetes. This program also targets women who are off reserve Aboriginal, recent immigrants, or those living in isolation with little access to services. Services include, dietary assessment and nutrition counseling, milk and vitamins/ mineral supplementation, healthy lifestyle education and breast feeding education and support. The purpose of this program is to support women through their pregnancy and reduce the incidence of low birth weights in the district for healthier children today and a healthier population tomorrow. In the past year, Marcia Labossiere, who is our Prenatal Outreach worker, worked with approximately 70 clients. Also with this program we have a nutritionist from North Battleford that works with Marcia in preparing assessments for her clients. This program works with an interagency group made up of Dr. Letkeman, Public Health, School Division, Hospital Staff, Executive Director of the Friendship Centre etc.

Family Violence Prevention Program

This program is funded through Saskatchewan Social Services, and Community Based Organizations. Its objectives are to provide education, encouragement and support to enable the Northwest region communities to address family violence issues effectively. These needs are being addressed through meetings, workshops, theatre groups and discussions. Brenda Villeneuve our coordinator for the Family Violence Prevention Program as well as the Family Support Program, is also in the process of setting up a Northwest newsletter regarding Family Violence issues, workshops, and other pertinent information. This program provides the centre with many family oriented activities annually such as the Family Fun Day, which includes a pancake breakfast. Brenda has organized a committee made up of community organizations and agencies to work on a community Protocol for Abused Women and their families. This committee is still working towards their goal of creating a protocol, which can be used by the whole community.

In Home Support Program

This program is jointly funded by Social Services and the Friendship Centre. The coordinator, Brenda Villeneuve, sets up contracts with support workers who go into the homes. At the present time the coordinator has four active support workers who go into the homes to do counseling, budgeting and general family support programming.

Driving Without Impairment Program

This program consists of a 16-hour course with the main objective of separating the acts of drinking and driving. In an average year the Centre puts 4 to 6 of these courses with anywhere from 30 to 50 participants overall. Each set of classes held consist of one weekend of films, questionnaire's and lectures by the local RCMP, Alcohol Counselors and instructors. The Friendship Centre also puts on the course for other local communities through contract agreements.

Court worker Program

This program has an advisory council, which consists of the Tribal Council, Metis Society and the Friendship Centre. The program serves the areas of Loon Lake, Pierceland, Green Lake and Meadow Lake. We have two court workers in places that have served over 500 clients in the past year. Designed as a liaison between the accused, the court and the counsel, the program helps explain the justice system to the accused and to make the needs of the accused known to the court. It helps to counsel Aboriginal people and advise them of their rights and services available to them and, when needed, to accomplish this goal in their own language.

Fine Option Program

Our receptionist, Marilyn Mannix, coordinates this program. In the past year we have served approximately 180 clients who have worked over 7500 hours towards payment of court imposed fines. This program provides offenders, who cannot afford to pay their fines, the opportunity to do community service work equivalent to the dollar amount of their fines instead of going to jail. Most of the community service hours are put in through organizations such as the Metis Society, Bingo Hall, Flying Dust Reserve, Robert Simard Centre, etc.

General Services

The Centre also offers general services to its membership such as typing, preparing basic income tax returns, preparing resumes which are kept on file for future reference, photocopying, faxing, general information services as well as referrals. We also have a commissioner of oaths on staff to help with legal documentation. The Friendship Centre also rents out our board and conference rooms to local community organizations. This provides local organizations with a meeting place as well as helps offset some program costs, which are not covered by other funding sources. The Friendship.Centre operates from 9:00am to 5:00pm Monday through Friday. Drop in and see us anytime, the coffee is always on.

Board Members

Name	Position
Gwen King	President
Sharon Corrigal	Vice President
Louise Morin	Secretary
Gerald Durocher	Treasurer
Herby Rowland	Board Member
Priscilla Millar	Board Member
Marian King	Board Member
Bertha Ouellette	Elder Board Member
Lawrence Sinclair	Youth Board Member

Staff Members

Name	Position
Gladys Joseph	Executive Director
Carol Morin	Administrator
Marilyn Mannix	Secretary
Brenda Villenueve	In Home Support Family Violence Prevention Coordinator
Wanda Lantz	Teen Parent Worker
Lori Lepine	Prenatal Outreach Worker
Susan Moncrief	Prenatal Outreach Worker
Mavis Pambrum	Aboriginal Courtworker
Dora Buxton	Aboriginal Court worker
Jessie Villeneuve	Youth Worker
Greg Villeneuve	Youth Worker

Prince Albert Indian & Metis Friendship Centre

94 15th Street East
Prince Albert, SK.
S6V 1E8
Phone: (306) 764-3431
Fax: (306) 763-3205
E-mail: paimfc@sk.sympatico.ca

The Prince Albert Indian and Metis Friendship Centre was originally established in 1958 as the Indian Metis Service Council. It was organized by a group of community volunteers who were interested in assisting urban people of Aboriginal background. By 1962, the Council became the Indian and Metis Friendship Centre of Prince Albert, one of four original centres in the Province. By 1963, the Centre received formal recognition from Municipal, Provincial and Federal levels.

The PAIMFC is a non-political, non-sectarian, autonomous social service agency existing to administer and implement programs to meet the needs of Aboriginal people either migrating to cities or living in them. The Friendship Centre is a bridge attempting to narrow the gap between two cultures, between a rural setting and an urban one.

The objectives of the PAIMFC are as follows:

1. To identify and cater to the social, cultural and recreational needs of the Indian and Metis people of Prince Albert and environs, as such needs are ascertained.
2. To initiate community action in respect of those needs set forth in subparagraph (1) hereof;
3. To enhance community participation by the people of Aboriginal descent.
4. To promote better understanding and relations between Aboriginal and non-Aboriginal citizens.

Programs

Mediation Alternative Measures Program

- Mediation is a voluntary program that allows youth between the ages of 12-17 an opportunity to deal with a criminal charge in a way that is positive. It provides direction to make amends. Mediation allows victims of crime voice their concerns, and gives them a 'say' in what happens in the case.
- The Crown Prosecutor's Office reviews what the young person's file to see if there is enough information to lay a charge. If there is, and if the accused does not have a

repeating pattern of criminal behavior, the Crown will refer the case to the mediation program. If the accused young person decides to take part in Mediation, the case is adjourned for eight weeks or more dependant upon circumstances involved.

- Before Mediation can happen, the young person must admit to some responsibility and the victim must agree to take part. If the victim refuses to participate, a surrogate victim is then used to represent the actual victim involved.
- The Mediator will help the people involved in mediation understand what is involved and they will be given a chance to speak in a meeting. The mediator will help the victim and the accused reach an agreement that they both feel good about. Once the agreement is reached, the Mediator helps make the agreement happen. The mediator then reports back to the court.

Stop Lift Program

- Alternative measures also offer the Stop Lift Program, which is recognized and beneficial to the kids. Stop Life is a series of classes designed to help kids in the program steer away from shoplifting.

Aboriginal Court Workers

- The Aboriginal Court worker program is mandated to assist Aboriginal youth and adults charged with an offense and youth alleged to have committed an offense before the criminal courts receive fair, just, equitable and culturally sensitive treatment.

Duties and Responsibilities

- Identify individuals who require services with emphasis on early intervention.
- Interview clients
- Explain to the accused the reason(s) for their charges and provide general information on legal rights (e.g.: right to counsel) and responsibilities in regard to the charge(s).
- Explain to the accused family and if necessary to the aboriginal community, the judicial system.
- Assist the client to obtain legal counsel and advice.
- Assist in identifying individuals who require services of legal aide and assist in explaining application procedures to the accused.
- Do liaison work with agencies that can assist the accused particularly the police, defense counsel, the court and the crown, to ensure they have all the information necessary to deal fairly with the accused.
- Find out if client requires adjournment, why and until when.
- Explain to the client the nature and meaning of any measures taken against them by the court (such as bail, detention, or conditional release).
- Conduct interviews with witnesses or references to assist in understanding the immediate circumstances of the accuser" position.
- Assist accused in tracking down charges, arranging for voluntary appearances, transferring of charges, etc...

- Assist the accused to prepare information to speak to sentencing.
- Be available in court to provide appropriate information about the accused to defense counsel, the judge and the prosecutor as well as help clarity matters for the accused. This may include speaking as a "friend in court" on behalf of the accused.
- Assist client in small claims court, child custody at court, and youth court.

Family Worker Program

The Family Worker Program objectives are to provide support family services to Aboriginal people in Prince Albert and area. The Family Worker duties involve assisting clients with a wide range of needs of a social nature such as:

- Information and referral to refer clients to the appropriate social service resources.
- Family and individual counseling to provide information and support clients experiencing various social problems.
- Home visits – provide supportive visits to clients in their home.
- Advocacy – Act as an Advocate to assist the clients in dealing with government agencies, landlords, and employers.
- Housing – assist clients moving into Prince Albert in finding income based adequate housing.
- Food Bank Referrals – food bank referrals are made from (9 -11:30 AM) Mon. -Fri.
- Income Tax Forms – Assists Elderly with income tax returns.
- Transient Aid – Reviews & Issues emergency transient aid.

Fine Option Program

The Indian & Metis Friendship Centre of Prince Albert is the Adult Fine Option Agency for the City of Prince Albert. The Fine Option Program is an alternative to monetary payment of fine enabling offenders to work at minimum wage rate for non-profit organizations. This service is available to anyone in need.

Duties & Responsibilities

- Register on a daily basis, individuals who bring their notice of fines.
- Explain work procedures with the clients, about the work placement agencies.
- Confer with them on placement and to see what placement is suitable for them in regard to distance to travel, and type of suitable work, which accommodates their health.
- Give the participants any necessary information regarding the work placement agencies and their expectations of how they want the Fine option worker to adhere to their rules and regulations.
- The agent is responsible in monitoring individuals, who are ordered by the courts. To perform community service hours.
- The agent places individuals at job sites, and they are treated the same way as employees at the job site.
- Continue to recruit further agencies and organizations for the Fine Option Program.

- Stress the need for suitable work regarding students, employees, and individuals for after hours and on weekends.

Board Members

Name	Position
Pat Dreaver	President
Julie Pitzel	Vice President
Ron Fiddler	Treasurer
Carol Friedhoff	Secretary
June Anderson	Elder Rep.
Aleyna Stene	Youth Rep.
Mike Pocha	Board Member
Bonnie Paykeekoot	Board Member
George Sayese	Board Member
Barry Robertson	Board Member
Raymond Burns	Board Member
Brenda Holmlund	Board Member
Donna Soles	Board Member

Staff Members

Name	Position
Allan Dreaver	Executive Director
Rose Henry	Program Director
Frank Carriere	Alternative Measures
Janet Carriere	Fine Option
Lizette Whitehead	Financial Assistant
Velma Loonskin	Family Worker
Elise Macaskill	Family Wellness Worker
Darcy Gervais	Court Worker
Bertha Birdsall Burns	Court Worker
Brian Best	Maintenance
Leslie Choumont	Receptionist

Qu'Appelle Valley Friendship Centre

Box 240
166 Louisa Avenue
Fort Qu'Appelle, SK.
S0G 1S0
Phone: (306) 332-5616
Fax: (306) 332-5091
E-mail: qvfc@sk.sympatico.ca

Mission Statement

The purpose the Q.V.F.C. is to provide a range of support and direct services to the Aboriginal Community in fort Qu'Appelle. In addition, the Centre strives to bridge the gap between Aboriginal people and society at large through assisting in the process of social interaction, the sharing of cultures, and the advocation of harmonious working relationships between communities and cultures

Objectives

1. To increase Aboriginal peoples' awareness of the services available to them in their community and the community of Fort Qu'Apelle and encourage the use of available resources.
2. To provide support to the family unit is experiencing immediate and on-going difficulties in the urban environment.
3. To provide support to the family, individual, group, and community in coping with environmental difficulties and thereby reducing the number of negative contacts with police, Social Services, and other crisis situations.
4. To provide and support services of a preventative nature to minimize the escalation of crisis situations.
5. To provide assistance in the process of integration and the sharing of cultures, language translation, etc.
6. Act as a liaison between the people of Aboriginal descent, government, and other resource agencies with respect to housing, employment, and education.
7. Design and implement other programs essential to meet the needs of the Aboriginal community.

Programs

Basin Personal Services

- Drop in Centre
- Library, pamphlets and information services & newsletters
- Use of Boardroom for outside groups

Housing and Employment

- Housing searches & referrals
- Job postings
- Resume development & preparation
- Letters
- Use of telephone, fax & photocopier

Sustenance, Maintenance and Basic Services

- Emergency food bank(local)
- Christmas hampers(groceries and gifts)

Counseling and Referral Services

- Pension
- Social Assistance
- National Health and Welfare
- Alcohol, Drug and Suicide
- Ombudsman
- Human Rights Commission
- Rentalsman
- Revenue Canada
- Veteran's Affairs Canada

Legal Services

- Fine Option Program
- Post Warrant Fine Option Program
- Community Service Orders
- Youth Alternative Measures Program (Y.A.M.P.)
- Driving Without Impairment Program (D.W.I.)

Literacy Programs

- Income Tax filing and GST Credit Applications
- Completing forms for seniors (Old Age Security, Guaranteed Income Supplement and Canada Pension)
- Providing space for tutors and students

Community Involvement

- Buckle Up Baby (Baby Car Seat Rentals)

- Providing speakers for schools and colleges on legal matters, cross cultural, and programming at Friendship Centres
- Liaison with Town Council, Tribal Council, Community Play, Local Service Clubs, New Dawn Valley Treatment Centre, Qu'Appelle Haven, and Government Agencies and Departments.

Diabetes Program

- Educate the public on Diabetes and its prevention
- Preventative measures and education regarding Diabetic complications
- Drop in Centre for blood sugar and blood pressure monitoring
- Diet and Exercise counseling
- Referral to other medical and counseling agencies
- Special events and public speaking regarding Diabetic education
- Community garden and horticultural education for Diabetic nutrition

External Involvement

- Conduct workshops for other boards on parliamentary procedures and roles and responsibilities of boards.
- Provide independent chairperson for annual meetings
- Provide liaison to and membership in:
- Fort Qu'Appelle R.C.M.P. Local Advisory Committee
- Regina Subdivision R.C.M.P. Local Advisory Committee
- Parkland Regional College Board
- Advisory for N.S.I.M
- Pathways Board
- Fort Qu'Appelle Interagency Organization
- Southeast Metis Development
- Social Services: Talking Circle

Board Members

Name	Position
Penny Harvey	President
Greg Amyotte	Vice President
Miles Davis	Secretary
Gary Hanes	Treasurer
Gerid Coates	Youth Rep.
Red Thomas	Director
Mel Taypotat	Director
Carol Johns	Director

Staff Members

Name	Position
Ross Cowan	Acting Executive Director
Debbie Horne	Youth Worker
Wendy Whitebear	Youth Program Coordinat
Rob Donison	Alternative Measures Coordinator
Teri Lavik	Diabetes Officer
John Lavallee	Youth Worker
Dawn LaCroix Neely	Receptionist
Sharon Gambler	Accounting

Regina Friendship Centre

3100 Dewdney Avenue
Regina, SK.
S4T 0Y7
Phone: (306) 525-5459
Fax: (306) 525-3005
E-mail: rfcc@sk.sympatico.ca

Regina
Friendship Centre

The Regina Friendship Centre is a Human Service Organization committed to delivering Programs and Services for at Risk Children, Youth and their families. Our Organization provides a holistic approach in addressing crisis and social issues. Our communities are to promote and develop Family Support systems that enhance the Emotional, Mental Physical and Spiritual of our community.

The Regina Friendship Centre has succeeded in re-establishing itself as a vital institution for our community. The Thousands of people that come through the doors every week is an illustration of how valuable it has come to be for many of us and what role we will have in helping building our future.

The goal of the Regina Friendship Centre Corporation is to promote self-recognition and recognition by the community-at-large of the identity, culture and heritage of Aboriginal Peoples of Regina.

- the promotion of causes and issues important to the Regina Aboriginal community
- Informing political leaders and government officials concerning socio-economic cultural issues necessary to assist the Regina Aboriginal community in participating more fully in the life of the community and the larger society
- show respect and honour for all Aboriginal beliefs and customs
- be committed to information sharing, referrals, recreation and social activities, cultural reinforcement, community development and similar activities which will ensure that Aboriginal people will be afforded a better quality of life through Aboriginal self-determination

Programs

Child Youth and Families At Risk Program (C.Y.F.A.R.)

The Child Youth and Families at Risk Program is an innovative program in which the focus is on "High Risk" youth and our communities most exasperating issue, "auto theft." The Regina

Friendship Centre is fully aware of the impact this problem is having on our community. Consequently the R.F.C.C. has accepted the responsibility and challenge to address it. This commitment however was not entered in to lightly. We realize that many of the motivating factors that influence these kids originates from the socio-economic of urban poverty. Add to that the dysfunctionalism of family breakdowns and street life that is fouled by crime, gangs, and peer pressure, and you have the ingredients that are necessary to persuade these kids to commit crime. The C.Y.F.A.R. program's focus is on holistic healing. Our elders will assist the youth in a journey to rediscover their spirit through cultural activity and ceremony and will teach our youth to live a balanced lifestyle.

Programming:

- Child, Youth and Family at Risk Program (C.Y.F.A.R.)
- Women's Healing Circle
- Men's Healing Circle
- Radio Program 91.3 FM CJTR
- 2 on 2 Summer Basket Ball League
- R.F.C.C. Survey for North Central Residents
- Youth Recreation Programs
- "Youth 4 Youth" Aboriginal Youth Leadership Development Conference August 15th-18th, 2002.
- Call us for more information or to get involved in any of the programs we offer.

Services Offered:

- Drop in Centre, Free Coffee All Day
- Food Bank Referrals
- Free Bread Mondays and Wednesdays after 2:00 PM
- Clothing Bank – depending on donations
- Hall Rental for small groups
- Faxing, typing and photocopying

- Job Postings
- 24 Hour Crisis Line
- Youth Opportunities/Events Bulletin Board

Executive Director Report

Tansi,

To the Indian and Metis Communities of Regina I hope that having reached this mid-term point in our summer has given you and your families some well deserved enjoyment.

Here at the Regina Friendship Centre we have been busy organizing events and maintaining programs to ensure our Centre is about to effect maximum change and reach the most people. In spite this effort however it is still a challenging task to provide these types of services that so many of our people require.

Overall I believe the impact we have made in the short time period we have been back here in the North Central Area has been significant. The many thousands of people that have visited us utilized the programs have been overwhelming, supportive of our efforts and for that I am indeed thankful.

Through the rewards of receiving this kind of satisfaction we want to continue on in our efforts at serving the Aboriginal communities.

In Friendship,

Conrad Lavalley
Executive Director
The Regina Friendship Centre

Board Members

Name	Position
Maurice Aubichon	President
Valerie Welz (Stevenson)	Vice President
Len Young	Treasurer
Candace McLaughlin	Secretary
Eugene Aubichon	Board Member
Emilia Laliberte	Board Member
Dora Morin	Board Member
Jeff Zehner	Board Member
Margarie Obleman	Board Member

Staff Members

Name	Position
Conrad Lavalley	Executive Director
Ernest Lavalley	Youth Program
Starla Eashappie	Admin. Assistant
Stacy Bear	Youth Worker
Ashley Norton	Youth Worker
Doug Aubichon	Youth Worker
Kim Stone	Community Development Worker
Eileen McDougal	Community Development Worker
Ryan Smith	Summer Student

Saskatoon Indian & Metis Friendship Centre

168 Wall Street
Saskatoon, SK.
S7K 1N4
Phone: (306) 244-0174
Fax: (306) 664-2536
E-mail: simfc@sk.sympatico.ca

The Saskatoon Indian & Metis Friendship Centre is a non-profit organization that was incorporated in 1963. The main vision of the Indian & Metis Friendship Centre is to assist Aboriginal citizens. Since the inception, the centre has developed and delivered numerous social, recreational and cultural programs.

Purpose:

The Indian & Metis Friendship Centre is designed to improve the quality of life of Aboriginal people in an urban environment by supporting self-determined activities which promote Aboriginal culture distinctiveness, and which respect equal access to and participation in Canadian society.

Objectives:

1. To provide a reception centre for migrating Aboriginal people coming to the city of Saskatoon.
2. To provide an information and referral service for Aboriginal people residing in the city.
3. To provide a place where cultural activities and identification can be carried on and maintained. 4. To provide a meeting place where the Aboriginal and non-Aboriginal community can come together, mutually support each other, and exchange ideas and values.
5. To act as a catalyst for identifying Aboriginal concerns and needs.

Programs

Youth Group

The Saskatoon Indian & Metis Friendship Centre Youth Group was created for youth between the ages of 12 - 24. The Youth Group offers a variety of programs for the youth to learn and gain knowledge in different activities.

Youth Works

The Saskatoon Indian and Metis Friendship Centre believes that many young people who find themselves in conflict with the law would be willing to make restitution to their victim, but they lack the opportunity or the skills to do so. It is for this reason that we have developed the Youth Works Program.

Through this project, young persons will be offered an opportunity to work (under qualified adult supervision) in the community on paid projects, which we arrange for them. Fifty percent of the money youth earn from each job will be paid to their victim to lessen the financial impact their behavior has caused. Youth receive a portion of the profit from the job to provide an incentive to reinforce non-criminal behavior. They will also acquire job skills that will assist them now and in the future.

Family Violence Program

The main purpose of the Family Violence Program will be to provide healing from the hurtful effects of Family Violence in a manner that incorporates a holistic approach.

Goals and Objectives:

1. To provide individual, family or group counseling to heal from effects related to family violence that is appropriate to the unique backgrounds of the individuals we serve.
2. To provide a safe environment in which confidentiality is respected.
3. To provide support in a non-threatening manner.
4. To adopt a family approach to healing.
5. To provide intervention and alternative ways to deal with abuse. (anger, frustration, abuse, distorted thinking, self-talk, dysfunctional relationships and codependency.)

Family Worker/Trustee Program

The Family Services Program offers many services to "walk-in" or referred clients; as well as our current "regular" clients to whom we provide trustee services.

Objectives:

To work in the general area of Human Services, providing encouragement and support to individuals and families of Native origin.

1. Provide guidance and counseling to clients.
2. Initiate contact and maintain an information system with all organizations and agencies.
3. Enhance cultural and community awareness of the issues facing Native people in an urban setting.

Hepatitis C Partnership

The Saskatoon Hepatitis C Partnership is comprised of the Saskatoon Indian & Metis Friendship Centre, Saskatoon District Health, Saskatoon Tribal Council and Elizabeth Fry, with project funding from Health Canada. The Indian & Metis Friendship Centre administers the project funds, provides office space and supervision to the Hepatitis C Facilitator.

Project Goal:
The overall goal of the project is to contribute to a better understanding of Hepatitis C within a targeted population in Saskatoon.

- Through education, we will be able to reach a large number of people, many of whom are at high risk for Hepatitis C or affected by Hepatitis C.

- Community based education will provide support for those making lifestyle changes or living with the disease through referrals and the opportunity to network with others.

- Culturally sensitive and appropriate programming will allow the partnership to extend its reach in order to enhance understanding in a more holistic way.
  Funding will allow the Saskatoon Partnership to develop, implement and evaluate the project and to recommend sustainability of the project.

Board Members

Name	**Position**
Lyndon Linklater	Chairman
Norris Petit	Board Member
Winston Mckay	Board Member
James Caron	Board Member
Rick Daniels	Board Member
Robert Cameron	Board Member
Michael Maurice	Board Member
Neil McCormick	Board Member
Louise Oelke	Board Member
Louis Evanchuk	Board Member

Staff Members

Name	**Position**
May Henderson	Executive Director
Paul Koo	Accountant
Keith Chilton	Trustee Worker
Marilyn Morrissette	Family Worker
Julia Durocher	Family Violence
Gwen Gleason-Graham	Hep. C. Facilitator
Wesley Maminas	Caretaker

Sipisishk Friendship Centre

Box 19
Beauval, SK.
S0M 0G0
Phone: (306) 288-4747
Fax: (306) 288-2236
E-mail: sipisishk@sasktel.net

Background

The concept of applying for membership in the Saskatchewan Aboriginal Friendship Centre (AFCS) originated at a public meeting held May 9, 1999 in Beauval. The meeting was called by concerned citizens in an attempt to begin finding ways to address the numerous social problems that were surfacing at an alarming rate. Parents were overwhelmed, the schools were asking for help and the courts were getting filled with young offenders.

The people in attendance identified the many positives we had going in the community and wanted to build on them rather than focusing on the negatives. In order to get to the root causes of the problems, there had to be a plan in place to identify, coordinate and bring the community together t work on issues. Throughout the meeting, several references were made regarding other communities running different programs and making resources accessible to their residents. Research provided is with information that AFCS were the basis from which many problems were being administered and why not apply for membership?

A letter was drafted up and sent to the AFCS asking for information on how we can apply for membership and it wasn't acknowledged immediately however towards the end of the year, we found out that the next meeting of the AFCS was happening in January, 2000 and Beauval was placed on the Agenda. The Beauval Council agreed to cover costs to send four delegates to make a presentation to the AFCS Board in Saskatoon. The outcome was favorable and Beauval was accepted into the membership. Furthermore, the delegates were assured that the Provincial Coordinator would be available to assist in the Incorporation and start-up process.

Following the meeting, an interim Board of Directors was formed consisting of seven (7) members and adopted the name "Sipisishk Friendship Centre". Because we didn't get the opportunity of accessing the services of the Provincial Coordinator for reasons unknown at this time, it was a very difficult learning experience but we asked various Centres for advice. Phillip Durocher from Ile a la Crosse provided is with a lot of information on programming, etc.

Programs

Upcoming Activities

- Planned Canoe/Camping Trips for youth
- Day Camps
- Music Lessons
- Assist with sending youth to South Bay Conference
- Youth Talent Showcase Family Show in August
- First Annual Elders Gathering
- Metis Society #37/Sipisishk Friendship Centre First Annual Friendship Days – tentatively set for Sept. 2001

Pathways to Wellness Incorporated/Sipisishk Friendship Centre Sub Committees Formed

- Kihtayak Group (Elders)
- Justice Committee to work with Police Management Board to access Cadet Corps training
- Lil Rascals Youth & Parents Group
- Women and Wellness Group
- Sipisishk Youth Group
- Sipisishk Square Dancers
- Youth Talent Showcase Committee

Board Members		**Staff Members**	
Name	Position	Name	Position
Darrel Burnouf	President	Vacant	Executive Director
Gail Roy	Vice-President	**UMAYC Project**	
Brenda McCallum	Secretary/Treasurer	Stella Laliberte	Youth Coordinator
Elaine Malbeuf	Council Rep.	Willis Aubichon	Youth Programmer
Bill Roy	Council Rep.		
Pauline Maurice	Board Member		
Lilian Aubichon	Board Member		
Tina Maurice	Board Member		
Willis Aubichon	Youth Rep.		
Vacant	La Plonge FN Rep.		

Yorkton Friendship Centre

139 Dominion Ave.
Yorkton, SK.
S3N 1S3
Phone: (306) 782-2822
Fax: (306) 782-6662
E-mail: yktnfc@sk.sympatico.ca

The Yorkton Friendship Centre was established on April 7th, 1971. The Yorkton Friendship Centre is a non-profit, non-political, non-sectarain charitable organization governed by a volunteer board or directors. The Friendship Centre has representation on various committees and boards, locally, provincially and nationally.

The Yorkton Friendship Centre was established with the following goals and objectives:

1. Assisting the process of integrating and sharing of culture.
2. Acting as a liaison between the people of Aboriginal descent and governments, volunteer agencies, industry and other ethnic groups.
3. Providing social and recreational programs.
4. Promoting Aboriginal culture, particularly in the fields of native language, crafts, dances and songs.
5. Maintaining a library on Aboriginal folklore, history and other topics.
6. Providing and maintain a referral and counseling service.

Board Members

Name	Position
Mike Keshane	President
	Vice President
	Secretary/Treasurer
Ivan Cote	Board Member
Vivian Wapemoose	Board Member
	Board Member
Sandra Lerat	Board Member
Edwin St. Pierre	Board Member
Michelle Jordan	Board Member

Staff Members

Name	Position
Dennis Langan	Executive Director
Linda Pelletier	Bookkeeper
Kim Kyle-Zwirsky	Family Worker
Velma Bigsky	Fine Option Worker
Nola St. Pierre	UMAYC Coordinator
	Assistant Coordinator

Programs

UMAYC Program

Provides a variety of educational, recreational and cultural activities for youth aged 10 - 29 years. The UMAYC program is a safe and friendly environment for youth. We even provide ride homes at the end of the evening. For more information call (306) 783-1084.

Family Services Worker

This program provides consoling, support, education and information to individuals and families. It also provides employment counseling, advocacy and referral, and home/school liaison counseling. For more information contact Kim Kyle-Zwirsky.

Food for Friends Program

Provides a free hot lunch to school children from the area surrounding the Yorkton Friendship Centre. The program runs from Monday to Friday from 12 noon to 1:00 pm. If your child(ren) live too far from the centre the program also provides a free bagged lunch to your child(ren)'s school. Should you like to utilize this program we ask that you come to the centre during business hours to fill out the necessary form and we can deliver the lunch to your child's school that same day (provided enough notice is given that day).

The program also provides a hot lunch for adults as well. However, there is a $2.00 fee and adults are only served from 12:30 to 1:00pm.

Fine Option Program

Is a program that is available for people who receive a fine and would prefer to work off the fine. To utilize this program one would have to pre-register and then begin community service hours. One is sent to various non-profit organizations to complete these hours.

Other Programs:

Youth Employment & Training
Wellness Workshops
Income Tax Preparation
Seniors Flu Clinics
Medical Services Referral Unit
Daily Drop in Centre
Healing & Sharing Circles
Child Health Clinics
Diabetes Outreach Program
AA Meetings

New and Developing Centres

1. Cumberland House Friendship Centre
2. Green Lake Friendship Centre
3. Maple Creek Friendship Centre
4. Pinehouse Friendship Centre
5. Swift Current Friendship Centre

SECTION 8:

JUSTICE REFORM: GOVERNANCE AND IMPLEMENTATION

A PAPER PREPARED BY MERRILEE RASMUSSEN Q.C.
FOR THE SASKATCHEWAN COMMISSION ON FIRST
NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

SEPTEMBER 2003

JUSTICE REFORM: GOVERNANCE AND IMPLEMENTATION

INTRODUCTION

25 years ago there was no "Justice Department" in the Government of Saskatchewan.[1] There was an Attorney General's Department, and the Attorney General fulfilled a constitutional/historical role that was originally about prosecuting contraventions of the law and advising the Crown.[2] In 1983, "Justice" sounded like a good name for a department; other jurisdictions in Canada had adopted the name and Saskatchewan didn't want to be left behind.[3] But what did a Department of Justice do that an Attorney General did not?[4] And what have we done to our understanding of the concept of "justice" by linking it to the activities of the Crown's law officers?

The last 25 years is also a period of time in which there have been a number of so-called justice inquiries in various Canadian jsurisdictions, including Saskatchewan. They have all made numerous recommendations, and many of those recommendations have been implemented, here and elsewhere. These include: the Royal Commission on Aboriginal Peoples (RCAP), The Manitoba Justice Inquiry, The Saskatchewan Indian and Métis Review Committees, The Marshall Inquiry, the LaChance Inquiry, Justice on Trial (Alberta), 1993 National Round Table, and in addition to the formal reports of these inquiries, there have been numerous other papers produced and endless writings. And yet, the "justice" statistics remain as dismal as ever. This is not to say that changes have not been made, they have. However, the sad reality is that the changes have borne little fruit in terms of having an impact on the lives of Aboriginal people in a positive way. The statistics of the last century on incarceration, poverty, and unemployment for Aboriginal people still hold true today.[5]

The focus of this paper is on a process for implementation of the recommendations of the Commission on First Nations and Métis Peoples and Justice Reform. It proceeds from the idea that justice is about much more than the criminal process itself. It conceptualizes governance as facilitating the ability of people to make or influence the decisions that affect their lives and therefore a necessary component of effective implementation. Finally, it conceives of implementation as a process that is on-going and permanent and proposes a vehicle by which that can occur.

JUSTICE

It is important to emphasize the impoverishment of understanding and expectation that results from conceiving of justice as those things that happen when the police charge a person with an offence. This is borne out in the testimonies provided by Aboriginal peoples themselves to the numerous inquiries and commissions studying them and justice, including this one. The machinery of the criminal justice system deals only with the tip of the "justice" iceberg: the failures of other institutions and systems in society. It is possible, and desirable, to improve the machinery, but mere tinkering with the machinery is not sufficient to produce the depth and quality of reform that will have an impact on outcomes. It is only the beginning.

The objective is not just to make the criminal justice system efficient, as has been done, for example, by allowing persons who have committed "minor" quasi-criminal offences to plead guilty by mail and pay a fine[6], but to endeavour to place an enduring emphasis on the conditions that will secure prevention. It is, indeed, arguable that by making the criminal justice machinery run smoothly and efficiently the result is to remove the moral dimension from the criminal trial as morality play, thus eliminating the most important aspect of the criminal justice system in reducing the likelihood of repeat offending: the approbation of community. In other words, the focus is on the machine and not on the job the machine was constructed to do. To actually shift the focus back to humanity it is necessary to acknowledge that the goal of "justice reform" is to produce the circumstances in society that will reduce or eliminate the need to resort to using the criminal justice machinery not merely to improve its efficiency.

---

[1] The first Department of Justice Act was enacted in 1983. See S.S. 1983, c. D-18.2.

[2] See Dale Gibson, "Development of Federal Legal and Judicial Institutions in Canada", Manitoba Law Journal, (1996) 23 Man. L.J. 450-495.

[3] No doubt following the federal model established in 1868, which established the concept of a Minister of Justice responsible to Cabinet and to parliament and an Attorney General responsible to carry out the historic duties of the office of the attorney general in England, chief among these being responsibility for the prosecution of offences. See ibid. at paragraph 15.

[4] The offices of Minister of Justice and Attorney General are combined in the same person, thus in a practical sense blurring the distinction between them. The names themselves suggest a division between the technical and the political.

[5] See current demographic data for Saskatchewan on-line at http://www.graa.gov.sk.ca/aboriginal/html/relations/urban/AbDemog2001/index.htm.

[6] *The Summary Offences Procedure Act* provides for a large number of "ticket" offences. For the most part, the cost of the pre-determined fine is lower than the cost of hiring a lawyer to plead not guilty or even the cost of taking time off work to attend at court unrepresented to please not guilty. In practical terms, it is less costly simply to plead guilty by mail and send in the fine than it is to argue about whether or not the offence was actually committed. "Justice" does not come cheaply.

Justice, in its pure form, must be more broadly conceived as the ability for all individuals to participate fairly in the benefits of society. Once conceived in this way, justice necessarily requires an emphasis on the conditions that will secure prevention. It is trite to observe, as all our grandmothers have told us in their various ways, that an ounce of prevention is worth a pound of cure. But it is only trite because it is true. Throughout this paper the term "justice" is used in this wider sense. The term "criminal justice system" is used to refer to the machinery of the criminal legal process.

GOVERNANCE

Responsibility and Control

People, individually and collectively take responsibility for their actions and for the actions of those around them when they have a measure of control over the decisions that affect their lives. This is demonstrated in the research conducted under the auspices of the Harvard Project over almost two decades.[7] Control has to be provided to people directly through their participation in the institutions through which these decisions are made, and indirectly through participation in the democratic process. Participatory democracy provides for meaningful participation in the democratic process and results in positive relationships between governments and people.

Governments and People

Respect and effective representation: The Supreme Court of Canada has told us that the right to vote as enshrined in the Charter does not protect equality of voting power per se but the right to "effective representation".[8] The Court affirmed this view more recently, finding that the right to vote protects the right of the individual to be effectively represented and to meaningful participation in the electoral system.[9] The Court has also stated that in a democracy, power rests with the people.[10] Aboriginal peoples are not effectively represented in federal and provincial government institutions, including Parliament and the Legislature. Nor are they effectively represented through their own governments, largely due to a lack of recognition of Aboriginal and Treaty rights in dealing with other governments and lack of resources.

RCAP recognized the lack of Aboriginal voice as a fundamental flaw and identified the immediate need to provide a voice for Aboriginal peoples as being at the foundation of its recommendations. RCAP was consistent in its call for a "new relationship" at every level national, provincial and territorial and particularly where decisions are made that affect the lives of Aboriginal people.

[7] See the Harvard Project on American Indian Economic Development on-line at http://www.ksg.harvard.edu/hpaied/overview.htm. The Harvard Project has conducted a number of studies and applied research to determine what are the necessary conditions for sustainable economic development among American Indian Nations. It has determined as the result of hundreds of projects over the last 15 or more years that sovereignty or self determination, capable culturally appropriate governance institutions are key to economic well-being

[8] Reference re Provincial Electoral Boundaries, [1991] 2 S.C.R. 158.

[9] Figueroa v. Canada [Attorney General], [2003] S.C.J. No. 37.

[10] Ibid at paragraph 30.

Treaties and the Constitution

The numbered Treaties, covering all of the territory that is now known as Saskatchewan, were entered into by the Government of Canada with the Indians in order to facilitate the opening up of the territory to various governmental activities and to settlement. As described in the Order in Council Setting up the Treaty Commission to negotiate Treaty 4,the Government of Canada considered it important to secure the consent of the Indians in the territory to these activities, which it realized would cause them concern.[11] In this sense, the Treaties are foundational documents that permitted the development of the west as part of the new country, Canada.

The Treaties are significant for a variety of reasons, but perhaps most importantly, because they established an intergovernmental process, based on a nation-to-nation agreement that acknowledges that First Nations, who were self-governing at the time the Treaties were signed, would continue to be self-governing in this new context. Although the specific language of the Treaty is not itself enough to determine its meaning (since it does not contain within it any of the understandings of the First Nations that are found in their oral history), nevertheless the text of Treaty 4 is typical in this regard and reveals even from the perspective of the non-Aboriginal signatory these hopes for the future:

> . . . they [the Indian signatories] will maintain peace and good order between each other, and between themselves and other tribes of Indians and between themselves and others of Her Majesty's subjects, whether Indians, Half-breeds, or whites, now inhabiting or hereafter to inhabit any part of the said ceded tract . . .[12]

The Government of Canada and the Federation of Saskatchewan Indian Nations, through the Office of the Treaty Commissioner, have developed a number of common understandings in relation to the Treaties, which they have set out in their *Statement of Treaty Issues: Treaties as a Bridge to the Future*. Both parties to the Treaties in Saskatchewan are agreed that the purpose of the Treaties was to provide for peace and good order, lasting alliances to foster future well-being, and the means of achieving survival and stability, anchored on the principle of mutual benefit.

This is not to suggest that there is no disagreement about what the Treaties mean. Certainly, the specific content of the Treaty promises in relation to education, or health care, or "justice" are in dispute. However, the fundamental point is that the discussion of these substantive matters must be premised on an acceptance of the Treaties having established this relationship of mutual respect and mutual benefit that can be built on to come to other common understandings.

Whatever the Treaties mean, they are constitutionally protected. That is, section 35 of the *Constitution Act, 1982*, states that the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed". The courts have held that this affords Aboriginal and Treaty rights a level of protection from interference or infringement by federal and provincial governments that is similar to the protection provided to individual rights through the Charter. In its decision in *Sparrow* the Supreme Court of Canada established the basic framework for section 35 cases.[13] Once the infringement of an Aboriginal or Treaty right is established, it falls to government to prove that the infringement is justified. Justification must include the demonstration that the infringement is for the purpose of securing legitimate objectives and that where possible the Aboriginal peoples who possess the right are able to exercise the right through their preferred means. This entails consultation with the Aboriginal peoples, and therefore discussion and negotiation.[14]

---

[11] PC No. 943, dated July, 23 1874

[12] The Hon. Alexander Morris, PC., *The Treaties of Canada with the Indians of Manitoba and the North West Territories including The Negotiations on which they were based* (Toronto, Belfords, Clarke & Co., 1880)

[13] [1990] S.C.R. 1075

[14] Delgamuukw v. B.C., [1997] 3 S.C.R. 1010 at 1112-1113 per Lamer C.J.C.

Thus, it follows that the most fundamental of Treaty rights, the right to self-government that the Treaties acknowledge and that makes the Treaties possible at all, is constitutionally protected from infringement as ar the rights that flow from the substantive content of the Treaties.[15]

Métis

The Supreme Court's very recent decisions in *R v. Powley*[16] and *R. v. Blais*[17], which were released on Septemb 19, 2003, have confirmed what Métis peoples have always known: that they are distinct, rights-bearing communities. According to the Court:

> The constitutionally significant feature of the Métis is their special status as peoples that emerged between first contact and the effective imposition of European control. The inclusion of the Métis in s 35 represents Canada's commitment to recognize and value the distinctive Métis cultures, which grew up in areas not yet open to colonization, and which the framers of the *Constitution Act, 1982* recogniz can only survive if the Métis are protected along with other [A]boriginal communities.[18]

As a result, again according to the Court:

> Section 35 requires that we recognize and protect those customs and traditions that were historically important features of Métis communities prior to the time of effective European control, and that pers in the present day. This modification is required to account for the unique post-contact emergence of Métis communities, and the post-contact foundation of their [A]boriginal rights.[19]

Powley and Blais deal specifically with claimed rights to hunt. But in a way similar to that in which section 3 protects the inherent right of self-government on which the Treaties were premised, the protection of community must also presuppose an inherent right for the community to govern itself. Indeed, much of what well-known about Métis history is the struggle by them for recognition of their right to govern themselves.

Aboriginal Right of Self-government

The inherent right of self-government arises out of the fact that people exist in a community. It is not created by Treaties, but is affirmed by them and by section 35 of the *Constitution Act, 1982*. This is an important feature of the relationship between the federal and provincial governments and First Nations and Métis people However, because the relationship does not arise not from the Treaties it is not restricted to Treaty First Nation As an Aboriginal right, the right of self-government is also recognized and affirmed by section 35 and exists in relation to other Aboriginal peoples.

The Royal Commission on Aboriginal Peoples recognized this, and concluded and recommended that "the righ of self-determination is vested in all the Aboriginal people of Canada, including First Nations, Inuit and Métis peoples". Little has been done by governments to respond positively to this recognition. Aboriginal people ar often – some would say, usually – left to litigate to have their rights recognized. Indeed, Aboriginal peoples ar frequently frustrated by the efforts of governments and their bureaucracies to understand judicial pronouncements about Aboriginal rights in the narrowest possible terms.

[15] The reference to section 35 is made for the purpose of emphasizing that "Aboriginal and Treaty rights" whatever their specific content (a point about which there is significant debate) are constitutionally protected, and that means that where such rights are infringed, the infringement must be justified. Many critics are of the view that this constitutional protection is of little or no use, either because it doesn't protect the sovereignty of Aboriginal peoples or because it engages Aboriginal peoples in battles that yield little that is positive to Aboriginal/non-Aboriginal relationships. There is much truth in both these points of view. This paper posits a practical process of implementation built on mutual respect, which would set aside these debates to concentrate on the development of positive, inter-governmental relationships out of which positive results are more likely to occur

[16] 2003 SCC 43

[17] 2003 SCC 44

[18] Powley, supra note 16 at paragraph 17

[19] Ibid at paragraph 18

Intergovernmental Relationships

Relationships between and among federal, provincial and Aboriginal governments are an important aspect of dealing with issues involving Aboriginal peoples, since responsibility in a legal and jurisdictional sense is fragmented among many different governments. In Saskatchewan this fragmentation extends to include northern municipal governments, which in one sense are merely creatures of provincial law and in another are the structures through which meaningful governance over a wide range of issues that are not just local in some parts of the province occurs.

The relationship between and among governments is crucial. These inter-governmental relationships determine voice, priority, financial arrangements, policy, laws, and ultimately respect for difference. Experience demonstrates that decisions made for Aboriginal people by non-Aboriginal governments, and policies and laws developed about Aboriginal people without inclusion of Aboriginal people, do not produce practical improvements in the lives of Aboriginal peoples or in their communities. RCAP's recommendations were designed to create a relationship that would allow for everyone to participate politically and privately, on the premise that when individuals and communities have an avenue through which they can make the decisions that will affect their lives, positive change will occur. Again, this positive inter-governmental relationship has not been fully realized.

Community Development

Although political voice is necessary, it is not the only or ultimate goal, and it is not just the actions of governments that shape communities. The vitality of a community is found in the non-governmental organizations, service clubs, religious groups and other interests, most of which are volunteer-based, that identify and respond to the needs of a community in a concrete way. Indeed, politicians, as representatives of the people, must respond to the needs of the people. Effective politicians must rely on strong communities. The less impact the community has on the elected politicians, the less power the community and its members have to effect change. The voice of the community is reduced to a whisper. Thus, with a heavy reliance on government and without adequate political representation/voice, Aboriginal people/communities can't set their own agenda, decide their own priorities, or impact policy or financial decisions that are then made "for" them. Aboriginal peoples, like all peoples, must have an avenue to effect positive change for themselves. Inclusion, participation and respect are key.

Bridging the Divides

The vision of this Justice Reform Commission: "One Community - working together to create a healthy, just, prosperous and safe Saskatchewan *Meyo Wahkotowin*" is one with which likely all people in Saskatchewan can agree. While we work with our commonalities and shared interests we can also acknowledge our differences and respect them. The dichotomies set up in many situations – urban/rural, Aboriginal/non-Aboriginal, North/South, and so on – do not only or even necessarily represent conflict. In fact, in many ways they are two sides of the same coin. The goal is to ensure all needs of everyone are identified, but to understand that one size doesn't necessarily fit all. The way in which needs are filled may or may not be the same for everyone, except in one important respect: the resolution of concerns must be approached in an inclusive, respectful way. We cannot assume to know the needs and priorities of others and no longer can we ignore them, once they are identified. The bridges that must be built to allow for this are, of course, trust and respect and patience, *Meyo Wahkotowin*.

IMPLEMENTATION

Our society suffers from the McDonald's syndrome – the expectation that it should be possible to instantly gratify every human need. However, the instant hamburger is only possible because of a significant investm in an elaborate infrastructure, consisting of physical buildings, systems, marshalling of human resources, and methodology, that has streamlined its production to an identified, targeted market. There are no instant solutions to any problems. Perhaps more importantly, solutions don't just happen. They must be planned in order to be delivered.

Implementation of this Commission's recommendations will not just happen either. Once this Commission ha determined its recommendations and chosen a path to take, the most important recommendation it is mandat to make is its direction to "recommend short and long-term implementation strategies and identify a vehicle oversee the implementation of its recommendations".

All strategies require that over-arching goals or objectives be identified, as well as the means or principles by which those objectives will be reached. Implementation is a three-dimensional action plan that breaks dow these larger goals or objectives into manageable pieces, sets out the steps or actions that must be taken to achieve them, and identifies the time frame within which they will be taken and by whom.

The role for the Commission is to identify a common vision and common goals, objectives or accomplishment along strategic directions, together with the measures that will tell us when they have been achieved: we wil know this is successful when we have measured outcomes which show, for example, that Aboriginal youth h a higher likelihood of graduating from high school than of going to jail .

RCAP envisioned an Aboriginal Peoples Review Commission as an independent body reporting to Parliament. This Aboriginal Commission was to have a broad mandate, monitor progress through clarification of issues, advocacy and public education and was also to evaluate progress, assess implementation and review and repo on Aboriginal issues to regularly assess what has been and remains to be accomplished. The Aboriginal Commission envisioned by RCAP was to last several decades, to advise and to persuade. It was not however, take individual complaints or to have any decision- making authority.

But what the Report of the National Round Table on Aboriginal Justice Issues[20] makes clear is that implementation can only occur when there is the political will to include Aboriginal peoples in the process o implementation on an equal basis that provides for their effective participation. Implementation of recommendations for justice reform cannot be done "to" Aboriginal peoples; it must be done by and with th

This Justice Reform Commission's final report and recommendations will of necessity be a work constrained its time and place. An effective implementation vehicle must be both long-term in nature (because solutions cannot be instant) and sufficiently flexible that it can adapt over time (because the particular activities that need to bee undertaken now are unlikely to be the specific activities that always need to be undertaken). It must also be built on the promise of Treaty and respect for Aboriginal rights, which means it must be intergovernmental in structure. Finally, it must be independent in order to have the capacity "to speak truth power". With these criteria in mind, an "Intergovernmental Justice Reform Implementation Board"[21] could l something like this:

---

[20] RCAP hosted a number of National Round Tables on the theme of Aboriginal Peoples and the Justice System. The Report provides a synthesis of the proceedings and th advice received by RCAP from the participants.

[21] The word "Board" is used simply to label this mechanism. There is no magic implied by the use of the term. The Board will be whatever the legislation that creates it makes it into: "A rose by any other name would smell as sweet".

Structure and Composition

The Board would be created inter-jurisdictionally by First Nations and Métis peoples, Canada and Saskatchewan. The Board would be an example of pooled or shared jurisdiction. Each of the contributing parties would enact complementary legislation to appoint equal numbers of members to the Board and provide the Board with a common mandate. This would require that non-Aboriginal governments recognize the ability of Aboriginal peoples to establish their own governments and for those governments to enact such laws on their behalf. This is an important, perhaps even critical, step towards realizing positive change. It is the key difference between things done to and for a people and things done by them. It is the necessary link between governance and implementation

The Board should consist of no more than 20 persons in total, so that it can function more effectively and without great cost. The persons named by each of the parties as members of the Board would be chosen for their knowledge of their respective communities and for their ability to function collaboratively and productively. They would not be "representative" of the parties in the sense that the parties would be legally bound by their actions and decisions, although certainly there is an expectation that the parties would be morally bound. Members of the Board would not be expected to simply give voice to the political concerns of each of the parties as reasons not to proceed with any specific activity or action, but would articulate those concerns only in terms of their impact on the manner and prospect of achieving implementation.

Mandate

In general terms, the mandate of the Board would be to provide a mechanism for co-operation among all governments in ensuring that the Commission's recommendations are reflected back to communities and implemented, despite the existence of many types of barriers, and that those recommendations are revised or modified to respond to the concerns of communities, especially over time. The Board would also function on a consensus basis to emphasize the co-operative nature of the enterprise and to allow Board members to speak freely and honestly about issues.

Functions

The Board's function would be to facilitate, monitor and evaluate the process and progress of implementation of the Commission's recommendations and to report on a regular basis to the governments of each of the parties and, most importantly, to the communities. The Board's initial task would be to prioritize and develop necessary actions to implement each of the Commission's recommendations, and to determine a process for involving communities in this prioritization and development, including a determination of what steps should be taken by what parties, and the timeframe within which those actions should occur.

Shared Jurisdiction

There are several potential areas of shared jurisdiction between Canada, Saskatchewan and First Nations that the Board could be empowered to develop and implement with community involvement.

1. Police Complaints: The process for police complaints is presently regulated under the *Royal Canadian Mounted Police Act* federally and under *The Police Act, 1990* provincially. Each of them has a very similar procedure for taking and investigating complaints. Many of the concerns that have been expressed about the criminal justice system relate to the actions of police, especially in relation to their treatment of Aboriginal persons. The FSIN has established a Special Investigation Unit to vette complaints about police, and has received more than 2000 complaints.

2. Child Advocate: The recent tragic case of "Baby Andy" illustrates the need for solutions that cross jurisdictional boundaries. The investigation of this case was carried out co-operatively, and suggests the need for a more permanent co-operative function to deal with issues that impact more broadly on the circumstances of children in care, especially given that two thirds of the children in the care of the Provincial Minister are Aboriginal children.

3. Ombudsman: The function of an ombudsperson is to investigate complaints from members of the public that government administration has been unfair in its dealings with them. It is apparently a natural next step in terms of ensuring that all governments act fairly and to address potential systemic concerns sooner rather than later.

4. Human Rights Commission: For jurisdictional reasons, human rights complaints may proceed under either federal or provincial human rights legislation through commissions statutorily created. The addition of Aboriginal jurisdiction and a shared process for rights violations, regardless of the jurisdiction in which they occur provides another opportunity for jurisdictional co-operation

These situations are provided as possible examples of areas in which shared jurisdiction can be a positive and productive means of addressing concerns. In all of them, all parties share common interests in ensuring that the rights of all people in the province are respected by all others and by their governments. In these cases, and in any others that the Board my identify, the Board would play a role to assist in developing the necessary legislative mandates and inter-agency protocols to enable the shared jurisdiction model to function.

Justice Reform Implementation "SWAT" Team

While the need for reform is a constant one, and the primary instrument for change is a permanent institution in the establishment of an Intergovernmental Justice Reform Implementation Board as a vehicle for implementation of the Commission's recommendations, the Board will require an effective liaison with communities, and communities will require access to the Board's ability to implement and influence change at the community level.

The Board would establish an inter-disciplinary team whose function would be to respond to the needs and demands of communities on an ad hoc basis. The team would comprise individuals with varying educational, experiential, and cultural backgrounds who would assist communities as requested with needs assessment and capacity building so as to develop effective institutions for implementation at the community level. In specific terms, the mandate of the Team would be to develop implementation boards locally. It would be accessed by communities directly by request, or would be deployed to communities to respond to identified needs. Its immediate function would be to "triage" concerns so as to identify issues or matters requiring immediate attention and determining what measures are required to deal with them. Its secondary function would be to direct the community to existing resources or, where those resources are lacking, to raise the identified need with the Board for it to assist communities to develop longer-term solutions.

Proposal

A draft outline of proposed legislation, including commentary on its provisions, is attached as an appendix to this paper. It is suggested as a starting point for discussion by the Commission of implementation in concrete terms.

SUMMARY AND CONCLUSION

Our shared Saskatchewan history teaches us about the value in diversity and in respect. Respect for difference is at the heart of positive change for Aboriginal peoples.

The Justice Reform Commission report must be a blueprint for action to effect this positive change. The Justice Reform Implementation Board is a mechanism by which to pick up the torch and carry on, together with communities, to develop and implement measures aimed at preventing involvement with the criminal justice system, and at improving the working of the criminal justice system so that real justice can be achieved for all.

Proposed Legislation

Model legislation to be enacted by each of First Nations, Métis peoples, Canada and Saskatchewan

An Act respecting a Vehicle for the On-going Implementation of Justice Reform within Saskatchewan

The concept proposed is that the exact same legislation be enacted by the governments of all of the peoples involved. For non-Aboriginal peoples, these governments are the Government of Canada and Saskatchewan. For Aboriginal peoples, these governments are the legislating bodies constituted by Aboriginal peoples to speak and act on their behalf. The governments of Aboriginal peoples have been generally denied to them since the time of Treaty-making in the territory that is now Saskatchewan. Non-Aboriginal governments will have to work with the representatives of Aboriginal peoples to develop and recognize their governments and ultimately to recognize the laws they enact.

The purpose of suggesting that legislation be enacted on behalf of all peoples in exactly the same form is to "park" the constitutional debate about jurisdiction. Aboriginal peoples take the legal position that they have comprehensive jurisdiction to enact laws directed in a holistic way to their own peoples. This view is not shared by non-Aboriginal governments. The debate over where the jurisdictional lines are drawn "in fact" will rage forever. Implementation of the Commission's recommendations cannot be held hostage to a resolution of this dispute. However, if all governments enact the same laws, it will be constitutionally true that wherever the jurisdiction may rest, it has been invoked to support the validity of the law enacted. In this way, the theoretical questions can be left to the theorists, while practical steps forward are taken.

Of course, the very first thing that must be done by the representatives of the peoples involved is to develop this legislation. What is presented here is only a framework or an outline within which negotiation will be required; it is not presented as a final solution.

Short title

1. This Act may be cited as *The Saskatchewan Justice Reform Implementation Act.*

Definitions

2. [*to be inserted as required*]

It is noted here that definitions in a statute are included to provide a convenient way in which to tie down with some precision the meaning to be given to words and phrases used in the statute. It is emphasized that the words and terms that are defined are defined for the purposes of the statute only. Words that are not used in the statute would not therefore be defined. Definitions to be included must derive from the substantive provisions of the legislation as they are developed.

Purpose of the Act

3. The purpose of this Act is to establish an ongoing structure for the implementation of the recommendations of the Justice Reform Commission, which recommendations are set out in Schedule A, by and with the Aboriginal peoples for whose benefit the recommendations have been made, in a process that is consensus-based, respectful of Aboriginal peoples and that provides for their equal and effective participation and that is flexible so as to adapt over time to their changing needs and aspirations.

It has become unfashionable to include material in schedules attached to legislation, but it is important that the actual content of the Commission's recommendations be physically attached to the legislation. This will have the result of making the recommendations more easily accessible and will emphasize their specific importance.

This provision is also intended to signal that the process of implementation is perpetual (although we know that legislation can be repealed or altered) and that the process is flexible. While we will establish an entity that will be called here a "board" it is not the board that is permanent but the structure for reform.

A consensus-based approach requires that all parties agree; it is not "majority rule". This may take longer. Consensus decision-making is not fast, but it produces the right result.

Establishment of Intergovernmental Justice Reform Implementation Board

4. The Justice Reform Implementation Board is hereby established as a body corporate.

The corporate structure itself is not especially capable of responding to the unique needs and demands of the implementation process at is envisaged. However, it results in the creation of a fictional "legal person" that has the ability to take valid action as a matter of law. This is the jurisdiction question again at the "micro" level. Another approach would be to identify these necessary powers in the legislation rather than to rely on the implied powers granted at law to corporations.

Appointment of members of the Board

5.

Each of the legislating partners will have to have a means by which they determine persons to be appointed to the Board who will speak for or represent the interests of the appointing party. This is necessary for the Board to have credibility in its actions with all governments.

The number of persons to be appointed by each government will have to be limited and equal so that the Board is not too large and unwieldy. They should possess exemplary communication and diplomatic skills, as well as being knowledgeable about the substantive matters with which they will be called upon to deal. They should be persons who are problem solvers and not problem finders. If the wrong people are appointed, the Board will not work. However, it is difficult to state these things legislatively and probably not effective. If a government chooses to appoint inappropriate persons it will say something negative about its commitment to change. It is the type of matter that is better resolved politically than legally.

The arbitration board model could be borrowed from with respect to the appointment of a chair. The arbitration tribunal is usually composed of a person appointed by each of the employer and the employees with a chair who is agreed to by the persons appointed by the sides. In a similar way, once all the representatives of all of the governments are determined, they could agree to the appointment of a chair for the Board. Again in the arbitration context, if the sides cannot agree within a reasonable time frame, some third party will be designated to make the decision. It would be rather inauspicious if the parties in this case could not agree on a chair, but provision could be made for the issue to be determined by a court or similar body in the absence of agreement.

Term of office and remuneration of members of the Board

6. (1) Appointments to the Board shall be for a term of three years.

(2) No member of the Board may be appointed for more than two consecutive terms of office.

(3) A member of the Board holds office until his or her successor is appointed.

It is important that persons serve on the Board for a long enough time to be effective, but not so long that they become entrenched in their thinking. Three years may be too long or too short. Two consecutive terms may not be enough. The point is simply that there should be limits.

Remuneration is a more difficult question because it is a question about money. Obviously Aboriginal participation will be dependent upon funding and funding arrangements will have to be negotiated. However, whatever cost-sharing arrangements are established there should be a budget allocation to the Board on an annual basis to carry out its responsibilities. If it is starved for funds it will be effectively controlled, and this will compromise both its independence and its effectiveness.

Objects of the Board

7. The objects of the Board are to:

(a) advise and make recommendations to the appointing governments on the implementation of the recommendations of the Justice Reform Commission;

(b) involve any persons, groups, organizations or other entities in the implementation of the recommendations of the Justice Reform Commission;

(d) develop and oversee planning for the implementation of the recommendations of the Justice Reform Commission; and

(e) advise the appointing governments in the administration of funding for the implementation of the recommendations of the Justice Reform Commission.

These objectives as stated are rather vague and lacking in power. However, what is critical to implementation is the political will of the governments involved. If the appropriate people are appointed to the Board, if they positively seek solutions rather than reasons why things won't work, if the mechanisms they develop for implementation are common-sensical, if they reach across jurisdictional boundaries with a co-operative spirit, and if they achieve conclusions based on consensus, their recommendations will be adopted because they make sense, they meet the needs of the parties and they respond to the interests of the parties. If the Board simply becomes another body that can impose itself on others through power rather than reason, it is less likely to be effective.

Interjurisdictional co-operation

8. The Board shall identify areas in which the appointing governments can work together interjurisdictionally to achieve common goals and shall develop strategies to achieve interjurisdictional co-operation.

One means by which the Board can have a significant impact is to develop areas for interjurisdictional co-operation. Examples of these are set out in the body of the paper. All of them, like the Board itself, rest on the idea that if the arguments about jurisdiction are set aside practical accomplishments can be achieved.

Facilitation, monitoring and evaluation

9. The Board shall identify the measures by which the success of the implementation of the recommendations of the Justice Reform Commission may be measured, and shall develop a process to monitor and evaluate implementation of those recommendations, including the provision of reports to the public and to the appointing governments.

An important aspect of implementation is monitoring and evaluation. There must be an identification of the objectively verifiable results that will be produced from successful implementation and the measures to assess them. On-going monitoring and evaluation enables implementation to be adjusted where it is not achieving the targeted results.

The provision relating to public reporting may have to be stronger, as the ability to report directly to the public is a feature that provides a degree of independence to the Board. The appointing governments would not then be able to keep things from being publicly known.

Procedures
10. The Board shall determine its own procedures.

Chair
11.
As noted above, the chair should be a person in whom all of the appointing governments have confidence. The best way to achieve this is to require that the chair be agreed to by all of them.

Reports and advice
12.

Appointing governments will each require an annual report from the Board, but in addition the Board should be able to provide other reports, whenever it considers it necessary of appropriate, both to the appointing governments and to the public.

Creation of community task teams
13. (1) The Board shall establish an inter-disciplinary community task team consisting of persons with varying educational and experiential backgrounds to assist communities to identify needs and develop capacity to organize and establish effective institutions for implementation of the recommendations of the Justice Reform Commission within the community.

(2) At the request of a community, the Board shall assign the community task team to assist the community in any ways that the community requires and to identify and priorize activities necessary to respond to the community's needs.

Agreements
14.

If the Board is not a body corporate it will require the authority to enter into agreements generally in order to achieve its objects.

Regulations
15.

It may be useful to have some ability to flesh out the legislative framework through regulations. Usually in a single jurisdiction, the power to make regulations will be given to the minister or the cabinet. In this case there will be multiple enacting jurisdictions working co-operatively, so any necessary regulations should be delegated to be made by the Board.

Coming into force
16.

The legislation should be effective once it has been enacted by all of the parties.

SECTION 9:

FETAL ALCOHOL SPECTRUM DISORDERS AND THE JUSTICE SYSTEM

BY RAE MITTEN

©COPYRIGHT H. RAE MITTEN,
JANUARY, 2004. ALL RIGHTS RESERVED.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS i

1. INTRODUCTION 1
    - 1.1 Need for Community-Based Treatment for FASDs 1
    - 1.2 Cost-Benefit Discussion 2
    - 1.3 Need for Therapeutic, FASD Courts 3
    - 1.4 Historical Context of Marginalization 4
2. FETAL ALCOHOL SPECTRUM DISORDERS 5
    - 2.1 Introduction 5
    - 2.2 Cause of FASDs 6
    - 2.3 Incidence 7
    - 2.4 Characteristics of FASDs 10
        - 2.4.1 Primary Characteristics 10
        - 2.4.2. Secondary Characteristics 11
3. PREVENTION 12
    - 3.1 Primary Prevention 12
    - 3.2 Secondary Prevention 15
    - 3.3 Tertiary Prevention 16
    - 3.4 Prevention of secondary disabilities 17
4. SOCIAL CONSTRUCTION OF FASD AND ITS IMPLICATIONS 20
5. RIGHTS DISCOURSE 23
    - 5.1 Section 15 of the *Charter of Rights and Freedoms*: Equality 23
    - 5.2 The Law Analysis: Context and Dignity 23
    - 5.3 Crown Justification Under Section 1 of the *Charter* 25
    - 5.4 Jurisdiction over Health Care 26
    - 5.5 Section 7 of the *Charter*: Right to life, liberty and security of person 27
6. CONCLUSION 29

REFERENCES 30

LIST OF ABBREVIATIONS

ADHD	Attention Deficit Hyperactive Disorder
ARBD	Alcohol Related Birth Defects
ARND	Alcohol Related Neurological Disorder
ASD	Autism Spectrum Disorder
ASDs	Autism Spectrum Disorders
BAC	Blood Alcohol Content
BTC	Breaking the Cycle
CALJ	Canadian Association of Liquor Jurisdictions
CAUT	Canadian Association of University Teachers
CBA	Canada Brewers' Association
CNS	Central Nervous System
DPN	Diagnostic and Prevention Network, Washington State
DSM-IV	*Diagnostic and Statistical Manual of Mental Disorders, Volume IV*
FACE	Fetal Alcohol Canada Expertise
FAE	Fetal Alcohol Effects
FAEE	Fatty Acid Ethyl Esters
FAS	Fetal Alcohol Syndrome
FAS/E	Fetal Alcohol Syndrome and/or Fetal Alcohol Effects
FASD	Fetal Alcohol Spectrum Disorder
FASDs	Fetal Alcohol Spectrum Disorders

IBI	Intensive Behavioral Intervention
ICD	International Classification of Disease
ICFS	Indian Child and Family Services
LAT	Lovaas Autism Treatment
MD	Medical Doctor
NCR	Not Criminally Responsible
NIAAA	National Institute on Alcohol Abuse and Alcoholism (U.S.)
OT	Occupational Therapist
P-CAP	Parent-Child Assistance Program
PEER	Parents as Early Educational Resource
pFAS	Partial Fetal Alcohol Syndrome
PT	Physical Therapist
RCI	Restorative Circles Initiative
SLGA	Saskatchewan Liquor and Gaming Authority
SLP	Speech-language Pathologist
IOM	Institute of Medicine (U.S.)
UST	Unfit to Stand Trial
WHO	World Health Organization
YCJA	*Youth Criminal Justice Act*
YOA	*Young Offenders Act*

FETAL ALCOHOL SPECTRUM DISORDERS (FASDs) AND THE JUSTICE SYSTEM

By Rae Mitten[1]

I. INTRODUCTION

1.1 NEED FOR COMMUNITY-BASED TREATMENT FOR INDIVIDUALS WITH FASD

Fetal alcohol spectrum disorders (FASDs) are a continuum of conditions, from mild to severe, that result from prenatal exposure to alcohol.[2] The thrust of this analysis is that for fetal alcohol offenders, holistic, community-based treatment is preferable as a sentencing option to incarceration. This contention is supported by an understanding of the nature of the syndrome per se. Because of reduced ability to think abstractly due to damage that alcohol inflicted on their developing brains *in utero*, fetal alcohol affected individuals do not understand well cause/effect relationships, including appreciation of the consequences of their actions, nor are they able to generalize completely what they learn in one situation to another.[3] Moreover, their judgment is poor, and they are influenced easily by others.[4] Although they may function fairly well in a structured, carceral environment, useful coping skills learned there are not readily transferable to noncarceral settings and must be largely relearned on the outside.[5] Because of impulsivity and obliviousness or blindness to consequences, fetal alcohol offenders are liable upon release to reoffend regardless of length of incarceration, making recidivism rates high for this population.[6] The sentencing principle of deterrence does not function well for individuals whose ability to appreciate consequences is limited.[7] Statistics demonstrate disproportionately high rates of incarceration of Aboriginal people,[8] with fetal alcohol conditions a concomitant factor.[9]

It should be clarified that fetal alcohol is not solely an Aboriginal, but a global phenomenon, found particularly where populations have been subjected to damaging effects of colonization or globalization, and resultant poverty.[10] Significantly, individuals with fetal alcohol conditions are highly susceptible to negative peer influences which carceral situations present, as well as being, vulnerable to victimization.[11] Such factors render carceral situations, artificial settings removed from the natural world, inappropriate for them.

---

[1] The author recently completed her LL.M., the topic of her thesis being *Barriers to Implementing Holistic, Community-Based Treatment for Offenders with Fetal Alcohol Conditions*. Much content of the present paper derives from the LL.M. thesis, although there is significant new material, as well.

[2] A more detailed analysis of FASDs occurs in Section 2 of this paper.

[3] *R. v. Steeves* [1998] B.C.J. No. 3151 (BC Prov. Ct.) at para 12-15, expert witness testimony of Dr. Diane Fast, cited in *R. v. M.L.*, [2000] S.J. No. 17 at para. 41.

[4] *Ibid.* at para. 15 (Steeves).

[5] *R. v. M.J.B.*, [2001] SKPC 83 (Sask. Prov. Youth Ct.) at para. 41-44, citing A. P. Streissguth, A.P., *Fetal Alcohol Syndrome: A Guide for Families and Communities* (Toronto: Brookes Publishing, 1997) at 238-244.

[6] Conry, J. and Fast, D. *Fetal Alcohol Syndrome and the Criminal Justice System* (BC Fetal Alcohol Syndrome Resource Society : Vancouver, c2000) at 104.

[7] *R. v. M.L.* [2000] S.J. No. 17 (Sask. Youth Ct.), at para 40.

[8] Canadian Centre for Justice Statistics, Aboriginal Peoples in Canada, retrieved July 30, 2003, from the World Wide Web: http://www.statcan.ca/english/freepub/85F0033MIE/85F0033MIE01001.pdf

[9] *Supra* note 3, at 2 (*Steeves* & *M.L.*) citing Streissguth et al's (1996) longitudinal American study of fetal alcohol affected youth, which found that 60% of the cohort aged 12 years or older had experienced trouble with the law. National Institute on Alcohol Abuse and Alcoholism (NIAAA), "Strategic Plan to Address Health Disparities," (Bethesda, Maryland, Feb. 8, 2001): "Children with FAS often develop behavior problems that increase their risk of becoming involved with the Criminal Justice System."

[10] Tait, C. L., Aboriginal Health Research Team, National Network of Aboriginal Mental Health Research, "Fetal Alcohol Syndrome among Canadian Aboriginal Peoples: Review and Analysis of the Intergenerational Links to Residential Schools," (Montreal, Quebec : Aboriginal Healing Foundation, 2002), at 113-117; and Gibson, F., *Home is My Road* (Toronto : Playwrights Canada Press, 2003). First produced in 2003 at Toronto's Factory Theatre Mainspace, April 12 to May 11, 2003; and discussion on a CBC radio interview with author, Florence Gibson, April 15, 2003, 10:00 p.m. on "Between the Covers".

1.2 COST-BENEFIT DISCUSSION

In comparing carceral and community-based options, there is a cost factor to consider. Keeping one youth out of a correctional facility saves $46,000 per year; and keeping one child out of foster care saves $16,000 per year. A child with fetal alcohol syndrome costs conservatively an estimated $1.5 million over his/her lifetime.[12] More liberal estimates put this figure at $5 million.[13] Cost of prenatal to age three intervention programs, such as the Manitoba "Stop FAS Program," is but $3400 per family.[14] On the bases of cost factors and previous discussion, one can tentatively conclude that not only are community-based intervention programs less costly, they are also likely to be more effective in terms of their outcomes, than are carceral options. Therefore, it cannot be deemed reasonable, from a cost-benefit analysis, to persist with the status quo.

Madam Justice Saunders in *Auton v. British Columbia (Attorney General)*[15] was skeptical of formal cost-benefit analyses, considering accurate forecasting of future costs questionable, but nevertheless deemed it obvious that a community-based early intervention program for children suffering from autism, at a current cost of $45,000 to $60,000 annually per child,[16] would be less costly than the alternative of possible life-long institutionalization.

> In a broad sense, it is apparent that the costs incurred in paying for effective treatment of autism may well be more than offset by the savings achieved by assisting autistic children to develop their educational and societal potential rather than dooming them to a life of isolation and institutionalization. [17]

Similar, but more pressing reasoning, applies to individuals with fetal alcohol conditions and their need for community-based treatment in lieu of institutionalization, in view of the incarceration such individuals often face.

Although it is accepted that community-based intervention generally is considered more effective than incarceration by experts in the field, there is a gap in the research related to the relative effectiveness of particular community-based interventions.[18] What works best, and how to implement such effective interventions for individuals with fetal alcohol conditions is not determined completely. Appropriate interventions per se are prospective topics of future qualitative study.[19] The present paper culminates in an analysis of potential avenues to mandate such treatment through the courts, or alternatively, or in addition, through the avenue of policy reform. Only when community-based treatments become more in evidence can problems of those affected by alcohol prenatally be effectively addressed.

---

[11] *Supra* note 6 at 69-71(Conry & Fast); and *United States v. Lee*, 1998 U.S. App. LEXIS 5967, No. 97-2830, United States Court of Appeals for the Eighth Circuit. In *Lee*, a "vulnerable-victim enhancement to sentence" was applied to an offender who plead guilty to sexually abusing a minor. The offender "knew or should have know that the victim of the offense was unusually vulnerable due to … mental condition." pursuant to *U.S. Sentencing Guidelines Manual* 3A1.1(b)(1997). The victim of the sexual abuse had fetal alcohol syndrome and was unusually vulnerable for her age. The offender was sentenced to 21 months imprisonment and two years supervised release, which was affirmed on appeal.

[12] Streissguth, A. P., Aase, J.M., Clarren, S.K., Randels, S.P., LaDue, R.A. and Smith, D.F. "Fetal Alcohol Syndrome in Adolescents and Adults." (1991) 165 JAMA 1961-1967.

[13] Kellerman, Chris. (2000). *The Five Million Dollar Baby: The Economics of FAS*. Retrieved from the World Wide Web on January 19, 2004: http://www.acbr.com/fas/ and McLean, Candis. (2000). *The Fetal Alcohol Crisis*. Retrieved from the World Wide Web on January 19, 2004: http://www.come-over.to/FAS/crisis

[14] Ridd, D., Manitoba Health, *Pregnant Addicted Women: Manitoba's Experience*, "Stop FAS: Cost Savings" (Third Annual Face Roundtable, *FAS: When the Children Grow Up*, Sept. 9, 2002, accessed September 30, 2002. http://www.knowtx.com)

[15] [2002] BCCA 538 at para. 145. [*Auton*].

[16] *Ibid.* at para. 17.

[17] *Ibid.* at para. 137.

[18] Streissguth, A. P. *Fetal Alcohol Syndrome: A Guide for Families and Communities* (Toronto: Brookes Publishing Co., 2001), at 279.

[19] The present author is commencing a Ph.D. study, entitled: *Qualitative Research Involving Community Based Treatment for Individuals with Fetal Alcohol Spectrum Disorder and its Efficacy.*

1.3 NEED FOR THERAPEUTIC, FASD COURTS

Along with the necessity for community-based treatment and sentences, lies the need for therapeutic courts. All members of the court, judge, defense attorney, prosecutor, youth worker, and expert witnesses (including peace officers), need to be informed about fetal alcohol conditions, and the implications of these conditions on various court processes,[20] including fashioning of truly therapeutic conditions:

> Youth workers, lawyers and judges need to be alert to these issues and to canvass and address them—joint submissions for a quick sentence which skirt over such matters risk missing the reasons for offending which can assist to explore alternatives to break the cycle of crime for a youth. As Drs. Conry and Fast suggest in their text Fetal Alcohol Syndrome and the Criminal Justice System (B.C. Law Foundation, 2000) at p. 4:
>
> When judges and lawyers understand the disabilities associated with FAS/FAE, they may be the first to suspect the possibility of this diagnosis in a victim, witness, or accused. Lawyers have an important role to play in presenting the evidence to the court so that people with FAS/FAE are treated fairly. Judges need to understand FAS/FAE and how it may affect sentencing. Others in the legal and correctional systems need to understand the importance of this diagnosis as they come in contact with many offenders with FAS/FAE. The disabilities involved may be subtle or severe.[21]

In addition, a risk assessment instrument specific to individuals with the behavioral and cognitive impairments that those with fetal alcohol conditions possess, and cognizant of supports available that would reduce risk, is essential,[22] as conventional risk assessment devices are designed primarily for offenders without cognitive impairments. Otherwise, any initial mitigating effect of mental disorder in sentencing considerations, may be converted to an aggravating factor when risk of re-offence is considered. In addition, risk assessment is to take into consideration any ameliorative effect on risk of therapeutic dispositions tailored by the court for the offender in his sentence order.[23]

Young persons affected by FASD usually have limited social and mental skills which reduce the effectiveness of punishment, and lead them to impulsively repeat property and system-generated offences:

> Saskatchewan must focus on this issue due to having the highest youth custody rate in Canada, and the highest proportion of persons under the age of 14 in custody. The province also has the highest Aboriginal population and a large segment of that population is children. . . . At one point she [Jo Nanson, a psychologist with a specialty in neuropsychology and expert witness for the court] estimated roughly 50% of the youth we see in youth court have some form of FASD. [24]

FASD youth require a productive pro-social environment; however it is difficult for courts to implement provisions in *Youth Criminal Justice Act*[25] that would address such needs of FASDs, due to lack of resources in the community,[26] contributing to a continual cycling of disabled offenders through the system in assembly-line fashion, without stopping and asking why they are offending, and what supports they need.[27]

---

[20] Supra note 6. Refer to Conry, J. and Fast, D.K. *Fetal Alcohol Syndrome and the Criminal Justice System* (Vancouver: Law Foundation of British Columbia, 2000), for a discussion of these factors.

[21] Supra note 5, at para. 5. (*R. v. M.(B.)*)

[22] *R. v. Proulx*, [2001] 1 S.C.R. 61 at 69-72. Lamer C.J. held that dangerousness is to be assessed in reference to the risk of re-offence and the gravity of damage that could thus ensure. However, the risk of reoffence should be assessed in the light of the conditions tailored for the sentence. The risk of reoffending with therapeutic supports in place is often considerably lessened.

[23] Ibid. (*Proulx*)

[24] Drover, D. "Saskatchewan judges lead fight for handling of FASD victims," quoting Judge Turpel-Lafond and Judge Whelan. 23(11) *The Lawyers Weekly*, July 11, 2003.

[25] S.C. 2002, c.1 (royal assent February 19, 2002; came into force April 1, 2003).

[26] Supra note 5 at para 94-96 (*R. v. M.(B.)*); and *R. v. M.(B.)#2*, [2003] SKPC 113 at para. 6, 22, 15 and 18.

[27] Supra note 24, quoting Judge Turpel-Lafond. (Drover, D. "Saskatchewan judges lead fight for handling of FASD victims")

1.4 HISTORICAL CONTEXT OF MARGINALIZATION

Although colonization begins with European Contact, continuing through, *inter alia*, the fur trade, whiskey trade, small pox pandemic, and near extinction of the buffalo, marginalization of the Indian way of life in Saskatchewan culminated in the decades after 1885. Confinement of Indians to reserves accelerated, following the Metis Resistance at Batoche, the trial and execution at Regina of Louis Riel, the trials and executions at Battleford of eight Indians, and the arrest and confinement of Poundmaker and Big Bear.[28] Implementation of the numbered treaties stalled; instead, Indians were made subject to the paternalistic *Indian Act*, which had been enacted first in 1876.[29] Indian Bands were created and white Indian Agents appointed to administer reserves.[30] Amendments to the *Indian Act* in 1884,[31] the so-called "anti-potlatch laws" forbade many Indian ceremonies for nearly seventy years, a prohibition ending only in 1951.[32] Other repressive measures enacted included: prohibition of raising money or of retaining a lawyer to advance land claims;[33] the "pass" laws whereby Indians required the permission of the Indian Agent to leave a reserve for any reason;[34] an interdict on producing or selling goods without the permission of the Indian agent;[35] and loss of status and entitlements for receiving a university education,[36] or, for a woman, marrying a non-Indian[37] (the latter not repealed until Bill C-31 in 1985[38]). In addition, Indians, considered not to be citizens, but rather wards of the Crown, were not allowed to vote in Federal elections until 1960.[39] Prior to the 1960 enactment, they were subject to losing their tax exemption as Indians if they voted.[40] In 1970, federal government prohibitions against use of alcohol by Indians were repealed.[41] Such externally imposed prohibitions may have contributed to the binge pattern of drinking characteristic of Aboriginal peoples. Binge drinking quickly raises the blood alcohol concentration (BAC), accelerating the teratogenic effects of alcohol. The unborn's BAC does not dissipate, as the fetal liver is not functioning to metabolize alcohol; therefore, alcohol remains in the fetal system much longer than it remains in the mother's system, with concomitant increased damage to the fetus.[42]

The interplay of the intergenerational effects of alcohol and the treaty provisions continue today, and await full resolution. Aboriginal alcohol consumption patterns continue largely unchanged from their origins during the whiskey trade.[43] Adverse effects on health, accidents, mortality, including suicide, family breakdown, poverty, unemployment, and alcohol teratogenicity such as fetal alcohol conditions are the result.[44] Since colonization, Aboriginal women have been particularly deleteriously affected by restrictive and sexist legislation and policy, which has tended to differentially exclude them from status, band membership and governance, and concomitant benefits.[45] As well, interference with the exercise of their maternal function came through residential schools and child protection policies. Such devaluation rendered them subject to domestic violence at home and to racism and sexism in the larger community, leaving them traumatized and vulnerable to alcohol abuse and addictions.[46] Prevention, addressed in treaty times through the alcohol ban, continuing currently, through persuasive initiatives such as education about responsible alcohol use, and treatment of addictions cognizant of factors which lead women to addictions, is part of the solution. Resolution of the problems of those involuntarily affected in utero needs to be addressed through the establishment of multidisciplinary, community-based treatment.

---

[28] Beal, B. and Macleod, R. *Prairie Fire: The 1885 North West Rebellion* (Toronto: McClelland & Stewart Inc., 1994).

[29] *Indian Act*, S.C., 1876, c.18.

[30] *Ibid.* at s. 4 and s. 3(11).

[31] *An Act further to amend "The Indian Act, 1880,"* S.C. 1884, c. 27, s. 3.

[32] *Indian Act*, S.C. 1951, c. 29, s. 123.

[33] *Indian Act*, R.S.C. 1906, c. 81, s. 149A [en. S.C. 1926-27, c.32, s. 6].

[34] Canada, *Report of the Royal Commission on Aboriginal Peoples, Looking Forward, Looking Back*, **vol. 1**, "9.10 Pass System," (Ottawa: The Commission, c1996) at 296, citing F. L. Barron, "The Indian Pass System in the Canadian West, 1882-1935," 13 *Prairie Forum* no. 1 (Spring, 1988), p. 27-28. Although the pass system was official policy, there was never any legislative basis for it. It is said to have arisen from a suggestion by the Deputy Superintendent of Indian Affairs to Prime Minister MacDonald in 1886, although Barron believes that it originated with Hayter Reed, former Indian agent at Battleford, at the time he was elevated to Assistant Indian Commissioner. The pass system was a form of local administrative tyranny, according to Barron. Parallels have been made between the Apartheid system in South Africa and the pass system in Canada, although Barron states that the pass system became only a weak reflection of the former: "[It] was applied selectively, but never enjoyed the coercive power and public legitimization conferred by official state sanction" (at p. 39). An early variant of the pass system begin in 1885 during the final days of the Riel Resistance, and there is evidence of it continuing until 1930 is some areas.

[35] *Indian Act*, R.S.C. 1927, c. 98, s. 40 and 41.

[36] *Supra* note 29, s. 86(1). (1876)

[37] *Supra* note 35, s. 14. (1927)

[38] *Indian Act*, R.S.C., 1985, c. I-5, s. 6(1)(c) [en. R.S.C., 1985, c. 32 (1st Supp.) s. 4].

[39] *Canada Elections Act*, S.C., 1960, c. 39, s. 14.

[40] *Indian Act*, R.S.C., 1952, c. 23, s. 14(2)(e). Veterans were exempted from this harsh disqualification.

[41] *Indian Act*, R.S.C. 1970, c.I-6, s. 96 and 98.

[42] *Supra* note 18 at 72-78. (Streissguth, A., 2001. A Guide to Families...)

[43] 1996 NWT Alcohol and Drug Survey. NWT Bureau of Statistics, retrieved February 10, 2003 from the World Wide Web http://www.stats.gov.nt.ca/SWtatinfo/Health/alcdrug/report.html

[44] Health Canada, *A Statistical Profile on the Health of First Nations in Canada* (Ottawa: Canada, 2003), retrieved January 30, 2003 from the World Wide Web: http://www.hc-sc.gc.ca/fnihb/sppa/hia/publications/statistical_profile.htm

2 FETAL ALCOHOL SPECTRUM DISORDERS

2.1 INTRODUCTION

Fetal alcohol syndrome was first described in the medical literature in France.[47] Subsequently, a landmark report published in the United States, described a constellation of birth defects in children born to alcoholic women.[48] It has since been described in most countries of the world. A cluster of abnormalities characterize fetal alcohol syndrome (FAS), including dysmorphology of facial features, reduced size in the newborn, as well as more serious problems previously noted in Section 1.1 in the areas of behavior and cognition.

Since the publications by Lemoine,[49] and by Jones and Smith,[50] much interest has developed in teratology, the study of the effects of chemical exposure on the developing fetus. Alcohol is one of a number of chemicals toxic to the developing central nervous system (CNS), which, like mercury, produce malformations in the CNS, along with neurobehavioral dysfunction. Alcohol, a potent teratogen compared to common abusive substances such as heroin, cocaine or marijuana, produces the most serious neurobehavioral effects in the developing fetus. In fact, results attributed to these other substances may be due to concurrent use of alcohol. However, like most teratogens, alcohol does not cause significant damage in 100% of fetuses exposed. Lack of definitive research results regarding effects of low to moderate exposure to alcohol, or from genetic protective factors that some fetuses may possess, should not be interpreted as contradictory to categorical warnings such as that of the Surgeon General of the United States:

> **Warning Label on Alcoholic Beverages. GOVERNMENT WARNING:** (1)ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGE DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OR ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY AND MAY CAUSE HEALTH PROBLEMS.[51]

The U.S. warning label is remarkable for clarity and wide distribution.

Health Canada and the Canadian Pediatric Society (supported by nineteen national associations representing medical, nursing and midwifery disciplines, Aboriginal and multicultural groups, and other organizations known for their extensive work in the area of FAS) issued the following joint warning in a news release, October 16, 1996:

---

[45] Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, vol. 4, "Chapter 2: Women's Perspectives," (Ottawa: Supply and Services Canada, 1996) at 25-[illegible].

[46] *Ibid.* at 62-71, and retrieved October 27, 2003, from the World Wide Web: http://www.pwhce.ca/sharing.htm

[47] Lemoine, P. Harousseau H., Borteryu, J., & Menuet J. "Les enfants des parents alcooliques: Anomalies observee apropos de 127 cas." Ouest Medical, 1968; 21: 476-482.

[48] Jones K.L. & Smith, D.W., "Recognition of Fetal Alcohol Syndrome in Early Infancy." (1973) Lancet, 2: 999-1001

[49] Supra note 47, (Lemoine)

[50] Supra note 48, (Jones & Smith)

[51] Public Law 100-690, Section 204.

> As there is no definitive information regarding a safe quantity of alcohol use during pregnancy, the Statement's recommendations are based on the fact that **"the prudent choice for women who are or may become pregnant is to abstain from alcohol"**.[32]

Fetal Alcohol Syndrome (FAS) is the condition of those who suffer at the severe end of a continuum of disabilities caused by maternal use of alcohol during pregnancy. Fetal alcohol effects, FAE, is the diagnosis given the similarly caused condition when the physical symptoms are more variable and less extreme. The mos recent diagnostic information originates from the 1996 United States Institute of Medicine's (IOM) delineation o multiple diagnostic categories: FAS with confirmed maternal alcohol use during pregnancy, FAS without confirmed maternal alcohol use during pregnancy, Partial Fetal Alcohol Syndrome (pFAS), Alcohol Related Neurodevelopmental Disorders (ARND), and Alcohol Related Birth Defects (ARBD).[33] FAE (largely replaced by the pFAS and ARND of the IOM) has been termed "the invisible disability," because affected individuals thoug superficially normal, may suffer central nervous system disabilities rendering them at risk for severe behavioral and cognitive problems. ARBD includes a range of congenital anomalies resulting from confirmed maternal alcohol exposure, which may involve heart, skeletal, vision, hearing, and fine/gross motor problems. FAS and FAE remain the terms referred to in the bulk of the literature on diagnostic criteria and prevalence studies. Collectively, these two most commonly-used diagnostic categories are denoted FAS/E. Furthermore, the total spectrum of disorders lies under the umbrella term, Fetal Alcohol Spectrum Disorders (FASD).[34] The incidence of FASD is estimated at 9.1 per 1000 live births in the population.[35]

Co-morbidities can accompany FASD, including: attention deficit hyperactivity disorder (ADHD), Attention Deficit Disorder (ADD), oppositional defiant disorder (ODD), attachment disorder, conduct disorder, personality disorder, and depression and suicide. FASD conditions may be misdiagnosed as one of these co-morbidities, especially ADHD among the middle class.[36]

FASDs are the leading cause of mental retardation, surpassing Down's syndrome and spina bifida. As brain damage occurs when the child is exposed to alcohol *in utero*, effects are not merely a matter of developmental delay. Rather, they are permanent and irreversible.[37]

2.2 CAUSE OF FASDs

As the cause of FAS/E is maternal alcohol use during pregnancy, it is *prima facie* a completely preventable condition. However, when underlying causes of alcohol abuse, such as poverty and marginalization are considered, a solution is not obvious. It is not simply a matter of education about dangers of drinking during pregnancy. Interventions tried with pregnant mothers will be discussed under the heading, Secondary Prevention, Section 5.1.5.

The earlier in the term of pregnancy alcohol is introduced, the more severe damage to the fetus likely will be. Degree of damage depends on many factors including *inter alia*: nutrition, genetics of the mother and the fetu amount of alcohol consumed, the mother's metabolic rate, blood alcohol content (BAC), pattern of consumption, timing of consumption, and general health. As previously noted, the fetus is more susceptible to damage from alcohol than is the mother, as the fetal system does not metabolize alcohol as does the mother's system; thus alcohol accumulates to a higher concentration in the fetus.[58]

---

[32] Health Canada and Canadian Pediatric Association, Joint Statement: *Prevention of Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) in Canada*, 1996, http://www.hc-sc.gc.ca/english/media/releases/1996/96-72e.htm.

[33] Stratton, K.R., How, C.J. Battagalia, F.C., Institute of Medicine. *Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and Treatment*. (Washington, D.C.: National Academy Press, 1996).

[34] Streissguth, A., and O'Malley, K. "Neuropsychiatric Implations and Long-term Consequenes of Fetal Alcohol Spectrum Disorders." Vol. 5, No. 3 (2000) Seminars in Clinical Neuropsychiatry. p. 177-190; and Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable (September 9, 2002), *FAS: When the Children Grow Up*, retrieved September 30, 2002, from the World Wide Web: http://www.knowfas.com

[35] Sampson PD. Streissguth AP. Bookstein FL. Little RE. Clarren SK. Dehaene P. Hanson JW. Graham JM (1997) "Incidence of fetal alcohol syndrome and prevalence of alcohol related neurodevelopmental disorder." *Teratology* 56: 317-326.

[36] Philp, M. "Middle-class FAS: A Silent Epidemic?" Saturday, February 1, 2003, Globe and Mail, page F6.

[37] Supra note 18 at 9. (Streissguth, A Guide for Families)

Mechanisms for alcohol teratogenicity are thought to involve ready absorption of low molecular weight alcohol across the placenta. Once it crosses the placenta it can affect developing fetal cell structures through induced chromosomal abnormalities and enzymatic malfunction, leading to malformation, dysmorphology and growth deficiencies. This mechanism is coupled with a tendency of alcohol metabolism to induce oxidative stress. Cell metabolism is altered by the presence of alcohol, which functions as a vasoconstrictor particularly at the umbilical cord site. The combined effect is fetal hypoxia or oxygen deprivation, with subsequent organic brain damage. Oxidative stress is the key mechanism of brain injury throughout the entire FASD spectrum.[59]

2.3 INCIDENCE

Incidence and prevalence data are somewhat problematic, in part due to the manner in which disease statistics are coded and collected. No codes existed under the World Health Organization International Classification of Diseases, ICD-9 system, for statistical reporting of fetal alcohol syndrome itself. The disease monitoring code 760.71, "noxious influences affecting fetus via placenta or breast milk, specifically alcohol; includes fetal alcohol syndrome" was used for collection of data for health statistics.[60] However, other conditions, such as exposure to mercury or other noxious substances, may have been included in 760.71. ICD-9 system has been replaced by ICD-10 codes, which has Q86, a more FAS-specific code, "congenital malformation syndromes due to known exogenous causes, not elsewhere classified."[61] According to a medical expert, Q86 eliminates problems of other teratogens, but does not allow for separate coding of pFAS, ARND, or ARBD. Q86 could be a general code for FASD, but appears to be used primarily for FAS.[62] In British Columbia an agreement with Vital Statistics allows for the use of Q86 with an addendum to accommodate for the addition of the 4-digit Seattle code;[63] the Seattle code would allow for a refinement of the ICD-10 code, Q86, to include the other prenatal alcohol diagnoses.[64] Unlike other Canadian jurisdictions where FASDs are not reportable conditions, in the sense that physicians billings report only those conditions presenting for treatment (such as a cold or flu), theYukon, under the authority of the *Public Health & Safety Act*, R.S.Y., c-176., does require mandatory reporting of FAS:

> 2(b) the reporting by every medical practitioner of persons under their treatment suffering from Fetal Alcohol Syndrome;

Since mandatory reporting was introduced in 2000, eleven names have been put forward by Yukon physicians and those came from only two doctors, rendering such mandatory reporting not an accurate reflection of prevalence and incidence of FASD in the Yukon. Physicians were required to forward information on diagnosis to a confidential registry; however, physicians proved reluctant either to forward information or to diagnose.[65]

[58] Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable (September 9, 2002). *FAS: When the Children Grow Up*, retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com

[59] Cohen-Kerem, R. and Koren, G. *Antioxidants and Fetal Protection Against Ethanol Teratogenicity;Review of Experimental Data*. (Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable, Sept. 9 2002. *FAS: When the Children Grow Up*, retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com)

[60] *Supra* note 52. *International Classification of Diseases*, ninth edition (ICD-9-CM), cited in: Stratton K., Howe, C., & Battaglia F. (Eds)(1996). *Fetal Alcohol Syndrome, Diagnosis, Epidemiology, Prevention and Treatment*. Washington, D.C.: National Academy Press, at 83.

[61] *The International Statistical Classification of Diseases and Related Health Problems* (ICD). The tenth Revision (ICD-10) was published in 1992, but not scheduled for implementation n Canada until 1998-1999 and in the United States, 1999-2000. Since 1948, the World Health Organization (WHO) has been responsible for ICD, publishing four revisions: ICD-6, 1948; ICD-7, 1955; ICD-8, 1965; ICD-9, 1975; and ICD-10 in 1992. ICD has become the international standard classification for all general epidemiological and many health management processes. Retrieved January 19, 2004, from the World Wide Web: http://www.who.int/whosis/icd10/

[62] Blakley, B., M.D., Kinsmen Children's Centre, Alvin Buckwold Clinic, Saskatoon, SK, e-mail communication of January 18, 2004.

[63] Astley, S. J. & Clarren, S.K., "Diagnosing the Full Spectrum of Fetal Alcohol Exposed Individuals: Introducing the 4-digit code." (2000) 35(4) Alcohol and Alcoholism, 400-410. Washington State Fetal Alcohol Syndrome Diagnostic and Prevention Network (DPN). http://alcalc.oupjournals.org/cgi/content/full/35/4/400. The four digits represent the magnitude of exposure of the four key diagnostic features of FAS: (1) growth deficiency; (2) facial phenotype; (3) central nervous system damage/dysfunction; and (4) gestational alcohol exposure. A coding of "1" reflects complete absence of the FAS feature, and a coding of "4" reflects a strong classic presence of the FAS feature. Codes can range from 1111-4444. Ranges of values can be selected for the other prenatal alcohol diagnoses.

[64] *Supra* note 62. (Dr. Blakley)

[65] FAS Registry Numbers. Patricia.Living@gov.yk.ca. E-mail communication of February 3, 2004.

In addition, neither the diagnostic criteria for FASD, nor their application, have been consistent. National guidelines pending from Health Canada will in future assist standardization of diagnoses. Studies on FASD specifically have been limited to certain clinical or hospital populations, or to certain isolated communities where alcohol consumption is known to be high. Not being representative samples, they are not generalizable to the population as a whole.

Mindful of these limitations, the present estimate of the world incidence of FAS is 1.9 cases per 1000 live births.[66] Currently, no national data for Canada exist, although Health Canada estimates the incidence at 1 to 3 per 1000.[67] It appears that the incidence of FAS/E is much higher among certain Aboriginal groups,[68] standing at 192 in 1000 live births in a British Columbia community where alcohol consumption was high.[69] A study of a Manitoba community reported a rate of 100 individuals affected by prenatal consumption of alcohol per 1000 live births.[70] Based on a selected group, an informal study placed the proportion of young persons incarcerated at 23.3 % FAS/E.[71] A study of young offenders appearing in provincial court indicated that nearly 50% had prenatal exposure to alcohol.[72] Projected prevalence rates in the general population applied to total prison populations predict a much smaller proportion (approximately 1%). This likely indicates that carceral populations are not representative samples of the general population. Moreover, only one-third of the 1% cases expected have been identified in the prison system. This is not surprising as none of the federal or provincial prisons or correctional centres studied reported having a screening program for FAS.[73] Access to diagnostic services is problematic, rendering prevalence statistics in most populations underestimations.[74] A paper published by Correctional Services Canada recommends:

> [That] [t]he criminal justice system begin its own pre-sentence investigative screening to determine if the individual in question has ever received a diagnosis of FAS/FAE.[75]

Waiting lists at diagnostic clinics across Canada range from 6 months to one year for children. National standards are being developed for diagnosis, with a view to their potential inclusion in the DSM-IV.[76] Many methodological problems exist, notwithstanding the diagnostic issues, in measuring incidence and prevalence rates. Estimates for Aboriginal incidence, in particular, must be assessed according to the context of isolated reserve communities and specific clinical population samples in which they were made, restricting the scope of generalization of these estimates. Moreover, considering FAS/E is a global issue, not solely an Aboriginal problem, Aboriginal incidence statistics are comparable to other marginalized populations where similar conditions abound: South Africa, Rumania, Russia, China and South America.[77]

---

[66] *Supra* note 10. Tait, C. "Fetal Alcohol Syndrome Among Canadian Aboriginal Peoples: Review and Analysis of the Intergenerational Links to Residential Schools," (Aboriginal Healing Foundation, 2002) at 91-117.

[67] Health Canada, http://www.hc-sc.gc.ca/english/media/releses/1996/96-72e.htm. Health Canada and Canadian Pediatric Association. Joint Statement: Prevention of Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) in Canada. 1996. http://www.hc-sc.gc.ca/english/media/releases/1996/96-72e.htm

[68] Standing Committee on Health and Welfare, Social Affairs, Seniors and Status of Women. 34th Parliament. 3rd Session, No. 10-22, index 1992-1993, 1-29 at 4. "Foetal Alcohol Syndrome. A Preventable Tragedy." (Ottawa: Queen's Printer for Canada, 1988-1992).

[69] Robinson, G.C., Conry, J.L.O. and Conry, R.F. "Clinical Profile and Prevalence of Fetal Alcohol Syndrome in an Isolated Community in British Columbia." (1987) 137 Canadian Medical Association Journal. 203-207.

[70] Square, D. (1997). Fetal Alcohol Syndrome Epidemic in Manitoba Reserves. Canadian Medic*al Association* Journal. 157:59-60.

[71] Fast, D.K., Conry, J.L., and Loock, C.A., "Identifying fetal alcohol syndrome (FAS) among youth in the Criminal Justice System. (1999) 20 (5) Journal of Developmental and Behavioral Pediatrics. 370-372.

[72] Zakreski, D. (March 10, 1998) Fetal Alcohol Syndrome Linked to Crime. Saskatoon Star Phoenix.

[73] Burd, L., Selfridge, R., Klug, M.G. and Juelson, T. Fetal Alcohol Syndrome in the Canadian Corrections System. September, 2003 J FAS Int., **e14**, The Hospital for Sick Children.

[74] *R. v. Gray*, 2002 B.C.J. No. 428 (B.C.S.C.). Boland, F. J., Burrill, R., Duwyn, M. and Karp, J., *Fetal Alcohol Syndrome: Implications for Correctional Services*, (Correctional Services Canada, 1998), which recommends that the criminal justice system begin its own pre-sentence screening for FASDs.

[75] Boland, F.J., Burrill, R., Duwyn, M. & Karp, J. (1998). *Fetal Alcohol Syndrome: Implications for Correctional Services*. Ottawa: Correctional Services Canada.

[76] Cook, J. L. *FAS Diagnosis: Health Canada's Activities*, (Third Annual Fetal Alcohol Canadian Expertise (FACE) Roundtable, Sept. 9, 2002; *FAS: When the Children Grow Up*. Retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com); Cook, J. and Huffine, C. "It's Time Psychiatry's Diagnostic "Bible" Addresses FAS," Iceberg: An Educational Newsletter for People Concerned about Fetal Alcohol Syndrome (FAS) and fetal alcohol effects (FAE), vol. 10, issue 2, 2000, p. 1-2. Note: The DSM-IV is the *Diagnostic and Statistical Manual of Mental Disorders* (Washington, DC: American Psychiatric Association, 1994).

[77] *Supra* note 10 at 113-117. (Tait) and (Gibson, K., *Home is my Road* and the CBC radio program discussion with the author on "Between the Covers," April 15, 2003, 10:00 p.m.).

Despite the lack of scientifically rigorous data, there is no denying that FASDs in Canada are prevalent among native populations:

> FAS is not a problem unique to Canada's native peoples but it is particularly prevalent among them. The National Native Association of Treatment Disorders estimates that 80 per cent of aboriginal people in Canada are affected by alcoholism, either through being addicted themselves or through dealing with the addiction of a close family member (Fournier and Crey 1997: 174). A leading researcher in the field, Albert Chudley, asserts that every native child adopted in the last two decades has suffered alcohol damage in utero, and that this fact—rather than alienation from white society—is at the root of their difficulties later in life (*ibid.*). Chudley may or may not be overstating his case, but there can be no doubt that the consequences of FAS for Canada's native population have been severe. Records from medical institutions in Saskatchewan showed that in the past decade, out of 450 children born with FAS/FAE 75% were aboriginal (Fournier and Crey 1997: 178). (116).[78]

Locally, regarding the non-offender population, in the 2003 calendar year, doctors referred 186 children to the Alvin Buckwold Child Development Program at the Kinsmen Children's Centre in Saskatoon, SK, for Fetal Alcohol Syndrome diagnostic assessments. With follow-up reviews, a total of 221 clients were seen through the Fetal Alcohol Syndrome Clinic. The mean age of clients at first evaluation is about six years. Costs of Fetal Alcohol Syndrome Assessments for non-offenders range from $350 to $1359, depending on the professionals involved in the assessment.[79] Included in estimated costs are: direct patient contact, preparation time, report writing, and liaison with schools, Department of Community Resources and Employment, and other agencies. Professional membership of the diagnostic team varies with the age of the client as follows:

- children under two are evaluated by a physician (MD, physical therapist (PT), occupational therapist (OT), and speech-language pathologist (SLP);
- children two to six are evaluated by an MD, psychologist, and PT/OT/SLP as indicated by client history;
- children seven and older are evaluated by an MD; and
- all new and some review appointments include appointments with a social worker (SW).

Based on client referrals, The Alvin Buckwold Child Development Program estimates a prevalence figure in Saskatchewan of 0.59 per 1000 population. This may be considered a gross underestimation as the clinic sees only children referred by a physician.[80]

The Regina Hospitals, the General and the Pasqua, together report 16 out of 2993 births in the period April, 2001 to March, 2002, and 9 out of 2882 births in the period April 2002 to March, 2003, yielding FAS incidence rates of 5.3 and 3.0 per 1000, respectively. During the time periods at issue, 8 and 17 clients, in addition to newborns, were seen respectively in the two years at the two facilities.[81]

The Royal University Hospital, Saskatoon City Hospital, and St. Paul's Hospital, in Saskatoon, report a total of 4 births out of 3,997 in 2001-02, and 2 births out of 3,832 in 2002-03, yielding FAS incidence rates of 1 and 0.5 per 1000 respectively. During the same time periods, 21 and 34 clients, in addition to newborns, were seen respectively in the two years at the three facilities.[82] Documentation and coding practices affect these statistics. In addition, newborns may not be diagnosed at the time of birth unless the physical indicia and evidence of maternal consumption are apparent. Prior to age two, some children with FAS do not show all the facial features or do not have evidence of CNS dysfunction of prenatal origin.[83] Unless FAS is the primary reason for treatment or admission, the condition, even if documented, may not be coded, as it is not mandatory to code secondary diagnoses.[84]

---

[78] Adams, M. *Our Son a Stranger, Adoption Breakdown and its Effects on Parents*, Montreal: McGill-Queen's University Press, 2002, at 136.

[79] Dr. Blakley, Alvin Buckwold Child Development Program, Kinsmen Children's Centre, telephone communication, January 8, 2004.

[80] Supra note 79. (Dr. Blakley)

[81] Heath Information Analyst, Regina Qu'Appelle Heath Region, e-mail communication of January 22, 2004, with LeeAnn Carr, LeeAnn.Carr@rqhealth.ca.

[82] Health Information Management Services, Sharon McMillan, Analyst, Royal University Hospital, Saskatoon, Saskatoon District Health, facsimile of February 4, 2004.

Province-wide, according to Court Services, FAS/FAE court-ordered assessments for April 1, 2002 - June 30, 2003 totaled 78. These assessments yielded the following diagnostic results: 2 FAS; 42 pFAS; 18 ARND; 2 prenatal alcohol category; and 14 with no confirmed prenatal alcohol exposure. Most of this sample of 78 were young offenders. The total cost of these assessments was $78,725.66.[85] The mean cost is $1009.30 per assessment, while the estimated mode or most frequent billing cost is $1650.00, with neuropsychological assessments being one of the higher costs. Physician FAS assessments were relatively low cost, at $557.50. Costs vary with the nature of the assessment, whether forensic-psychiatric, neuropsychological, family, FAS, or psychological. Various judges ordered assessments, and a variety of service providers carried them out. Judge Whelan ordered 30 assessments;[86] Dr. Jo Nanson carried out 30,[87] while Dr. Blakley did 26,[88] due to their expertise in FASD. It appears that clinical assessments are more economical than court-ordered assessments, while contributing to early diagnosis and treatment of FASD with resultant avoidance of the criminal justice system. Contact with the criminal justice system cannot occur before the age of 12, when it is too late for significant early intervention.

2.4 CHARACTERISTICS OF FASDs

2.4.1 Primary Characteristics

Primary characteristics of fetal alcohol syndrome include:

- General growth deficiencies (reductions in body weight, height and head circumference);
- Structural abnormalities which are primarily facial: short palpebral folds (small eye openings), epicanthic folds (extra skin folds close to nose), long and flattened philtrum (groove under nose), flattened maxilla (jaw and midface), shortened nose; and
- Central nervous system abnormalities associated with impairment of both cognitive abilities and behavioral or adaptive functioning (neurological abnormalities, behavioral dysfunctions, developmental delays and intellectual impairment).[89]

For individuals with FAE, the presence of the first two primary characteristics is more subtle, or may be absent; however, the last, most serious characteristic is pervasive throughout the FASD due to the devastating effect of alcohol on the developing nervous system.[90]

[83] *Supra* note 53 at 73. (Stratton, Howe & Battaglia, IOM)

[84] *Supra* note 82. (Health Information Management Services, Sharon McMillan, Analyst, Royal University Hospital, Saskatoon, Saskatoon District Health, facsimile of February 4, 2004.)

[85] Court Services, e-mail communications, January 12, 2004: from Christa Klatt, cklatt@justice.gov.sk.ca and Linda Bogard, lbogard@justice.gov.sk.ca.

[86] Judge Whelan's benchmark decisions in *R. v. J.A.P.* [2000] S.J. No. 260, *R. v. WALD*(1) [2002] S.J. No. 221, and *R. v. WALD*(2) [2002] SKPC 37, establish the framework for UST analysis (the last two cases involved young persons with FAS). In *R. v. R.F.* [2002] S.J. No. 742, R.F. was pFAS, and found not Criminally Responsible (NCR), but her disability served as a mitigating factor in sentencing.. *R. v. S.L.P.*, [2002] S.J. No. 311, concerned another youth with pFas, neither UST or NCR, but whose disability served as a mitigating factor in sentencing. In the context of a Crown request for presentence detention, the presumption against detention in s. 29(2) of the *YCJA* was analysed in *R. v. C.*(W.S.), [2003] SKPC 183 and found applicable in her case, an issue which as implications for FASDs and the community-based treatment they require. A presentence report was ordered and C. (W.S.) was referred for assessment . Judge Whelan takes a particular interest in young persons in her court, and disabilities such as FASD. She is one of the judges mentioned (along with Judge Turpel-Lafond) in Deanna Driver's "Saskatchewan Judges Lead Fight for Handling of FASD Victims," 23(11), *The Lawyers Weekly*, July 11, 2003.

[87] Dr. Jo Nanson is one of the few neuropsychologists in the province, has done many FASD assessments and also publishes and presents on the topic of FASD.

[88] Dr. P. Blakley is Medical Director of the Alvin Buckwold Childhood Development Program, and is Director of the Provincial Clinical Teratology Program, Department of Pediatrics, Royal University Hospital. She performs many of the physician FASD assessments for the clinic and for the courts.

[89] Jones, K.L., & Smith, D. W., "Recognition of Fetal Alcohol Syndrome in Early Infancy" (1973) 2(836) Lancet 999-1001; and Smith, D. W. *Recognizable Patterns of Human Malformation: Genetic,Embryologic and Clinical Aspects* (3rd ed.) (Philadelphia: W.B. Saunders, 1982).

[90] Clarren, S.K. & Smith, D. W., "The Fetal Alcohol Syndrome" (1978) 298(19) New England Journal of Medicine, 1063-1067; Hanson, J.W., Streissguth, A. P., & Smith, D. W., "The Effects of Moderate Alcohol Consumption during Pregnancy on Fetal Growth and Morphogenesis" (1978) 92(3) Journal of Pediatrics, 457-460; and Smith, D. W ,"Fetal Alcohol Syndrome and Fetal Alcohol Effects" (1981) 3 Neurobehavioral Toxicology and Teratology, 127.

2.4.2. Secondary Characteristics

Without appropriate intervention, FAS/FAE individuals risk developing secondary, antenatal disabilities, because of their cognitive and adaptive impairments. These disabilities, not present at birth, likely can be attenuated as victims mature through ongoing, effective interventions. Streissguth and others identified the following secondary disabilities in their 1996 study that considered a cohort of over 400 FAS/FAE individuals, ranging in age from six to fifty-one years:

- over 90% of those 6 and over experienced mental health problems;
- 60% of those 12 and older were either expelled, or suspended, or voluntarily dropped out of school;
- 60% of those 12 and over were charged with and/or convicted of a crime;
- approximately 50% of those 12 and over were institutionalized or utilizing in-patient treatment programs;
- 50% of those 12 and over had been involved in inappropriate sexual behavior; and
- 35% of those 12 and over experienced problems with alcohol and drugs.[91]

In the same 1996 study, Streissguth identified in her sample the following protective factors that attenuated the development of secondary characteristics in her sample:

- Living in a stable, nurturing home;
- Receiving developmental disability services early;
- Being diagnosed before six years of age.
- Not having frequent moves; and
- Not being a victim of violence;[92]

Surprisingly, Streissguth found higher rates of secondary disabilities in individuals who had FAE rather than FAS and who had an IQ higher than 70. She speculated that FAE individuals, lacking obvious bio-markers, are not diagnosed as early, and do not receive developmental disability services to the same extent as FAS individuals. This may account for the higher rates of secondary disabilities developing in this FAE population, and underlines the importance of protective factors in ameliorating secondary characteristics.[93]

Hallmarks of ARND, and other conditions included under the FASD label include: attentional and memory deficits, impulsivity, inability to appreciate consequences of actions, and lack of executive functioning. Executive functioning includes the capacity to think in a flexible way, to use feedback to modify behavior, and to use higher level conceptual thinking. FASDs who lack executive functioning often persist with an unsuccessful strategy over a considerable period of time, even when facing frustration.[94]

Streissguth and O'Malley[95] recommend supports over the lifespan of affected individuals, including the following adult interventions: sheltered living, job training, ongoing employment supervision, assistance with money and life management, and positive role models. Interventions recommended for each stage of the life cycle are included in the statements of best practices articulated by Health Canada.[96]

---

[91] Streissguth, A. P., Barr, H.M., Kogan, J., & Bookstein, F.L. *Understanding the Occurrence of Secondary Disabilities in Clients with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE): Final Report to the Centres for Disease Control and Prevention on Grant No. R04/CCR008515* (Tech. Report No. 96-06) (Seattle: University of Washington, Fetal Alcohol and Drug Unit, 1996), cited in A. P. Streissguth, *Fetal Alcohol Syndrome: A Guide For Families* (Toronto: Paul H. Brookes Publishing Co., 2001) at 107-112.

[92] *Supra* note 18 at 110-111. (Streissguth, a Guide for Families)

[93] *Ibid.* at 111-112. (Streissguth, A Guide for Families)

[94] *Supra* note 5. *R. v. M.B.*, [2003] S. J. No. 177 (Sask. Provincial Court). Expert Opinion of Dr. Jo Nanson.

[95] Streissguth, A. P. and O'Malley, K., "Neuropsychiatric Implications and Long-term Consequences of Fetal Alcohol Spectrum Disorders" (2000) Vol. 5, no. 3 Seminars in Clinical Neuropsychiatry, 177-190.

[96] Roberts, G. and Nanson, J. Health Canada, *Best Practices, Fetal Alcohol Syndrome/ Fetal Alcohol Effects and the Effects of Other Substance Use During Pregnancy* (Health Canada, Canada's Drug Strategy Division, 2000). Refer to "Best Practices Statements" 7.1.5 (infancy and early childhood), 7.2.5 (later childhood), 7.3.5. (adolescent interventions), and 7.4.5 (adult interventions).

3 PREVENTION

3.1 PRIMARY PREVENTION

Considering an estimated 50% of women in childbearing years consume alcohol and an estimated 50% of pregnancies are unplanned, a significant number of fetuses may be exposed to the risk of alcohol teratogenicity.[97] To deal with this risk, primary prevention focuses on the prevention of drinking, or, as an alternative, on the prevention of pregnancy. Product labeling, education, and assuring access to birth control are strategies employed.

Hankin reports a decrease in antenatal drinking associated with warning labels on alcoholic beverages, albeit a decrease small in size that does not impact the heaviest drinkers.[98] Product labeling (warning of birth defects and possible FAS) for alcoholic beverages was introduced in the U.S. in 1989 by passage of the *Alcohol Beverage Labeling Act*.[99] Subsequently, product warning labeling was considered in Canada with the introduction of private members' Bill C-222, *An Act to Amend the Food and Drug Act*, April 25, 1996. Bill C-222 unfortunately was never enacted. Warning labels, therefore, not required in Canada for alcohol products, paradoxically, must be placed on Canadian alcoholic beverage containers exported to the U.S.[100]

Warning labels serve to reinforce, but not to replace, other strategies. They should be used, not in isolation, but as part of a comprehensive strategy including initiatives in: education (pamphlets, books, media advertisements, videos, speakers, curricula), public policy, and treatment services. In Saskatchewan, warning labels are stamped on the brown carry-out bags for products purchased at liquor stores, but not on the products themselves. Brown carry-out bags, however, can be out of stock, and, when in use, often are removed, unread by the consumer. The Yukon and Northwest Territories introduced product warning labels for alcohol in 1991-2.[101] The Yukon warning label reads:

WARNING
DRINKING ALCOHOL DURING
PREGNANCY CAN CAUSE
BIRTH DEFECTS[102]

In addition, social responsibility messages are printed on the brown carry-out bags in the Yukon, including, *inter alia*, "Drinking while pregnant can harm your baby." Regardless of their limitations, product warning labels are the last line of defense before *in utero* damage can occur.

In lieu of product warning labels, the Saskatchewan Liquor and Gaming Authority (SLGA) provides support for such social responsibility initiatives as: anti-drinking and driving campaigns, programs aimed at educating the public on the dangers of drinking during pregnancy, the designated driver program, identification programs ("Please Bring your ID"), as well as national awareness campaigns in conjunction with the Canadian Association of Liquor Jurisdictions (CALJ). In 2001-2, the CALJ sponsored a national media public awareness campaign focused on the importance of neither selling alcohol to nor purchasing alcohol for minors. SLGA is a member of the Provincial FAS Coordinating Committee, chaired by the Saskatchewan Institute on Prevention of Handicaps (SIPH), which SLGA funds to some extent. Various advertising campaigns and conferences have been sponsored, and liquor store product bags and till tapes do display the FAS awareness message introduced in October, 1997:

---

[97] *Supra* note 59. Cohen-Kerem, R. and Koren, G. *FAS, When the Children Grow Up: Antioxidants and Fetal Protection Against Ethanol Teratogenicity*, Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable, 2002, retrieved September 30, 2002 from the World Wide Web: http://www.knowtv.com.

[98] Hankin, J.R., "Fetal Alcohol Syndrome Prevention Research," (2002) 26(1) The Journal of the National Institute of Alcohol Abuse and Alcoholism 58-65.

[99] *PL* 100-690; passed in 1988, came into effect in 1989. The *Act* mandates a warning on the label of each alcoholic beverage container sold in the United States: 1) *According to the Surgeon General, women should not drink alcoholic beverages because of the risk of birth defects* 2) *consumption of alcoholic beverages impairs your ability to drive a car or operate machinery and may cause health problems.* By 1981 the Surgeon General of the United States had advised women to avoid all alcohol during pregnancy. In 1970, Congress passed a law creating the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to support research on alcohol abuse and alcoholism, including research on alcohol and pregnancy, including FAS.

[100] *Fetal Alcohol Syndrome and Alcohol Policy, Policy Framework, Warning Labels Bills/Motion*, Apolnet (Alcohol Policy Network), retrieved February 14, 2003, from the World Wide Web: http://www.apolnet.org/actpacks/pl_fas.html.

[101] Parliamentary Committee, Thursday April 18, 1996: Food & Drugs (2), http://www.parl.gc.ca/committees352/sfda/evidence/02_96-04-18/sfda02_blk101.html.

[102] Yukon Liquor Corporation, Social Responsibility, retrieved January 29, 2004, from the World Wide Web: *http://www.ylc.yk.ca/socialrespon.htm*. The actual size of the warning label is 1.25" x .88" (3.25 cam x 2.24 cm), and it is bilingual. The label is placed on every bottle sold in the Yukon.

HAVE ONE (ONE is CROSSED OUT AND REPLACED BY SOMEONE)

FOR THE ROAD

CHOOSE A DESIGNATED DRIVER

DRINKING ALCOHOL DURING PREGNANCY CAN HARM THE BABY

We have Fetal Alcohol Syndrome in our Community...Let's Find A Solution[103]

Although such initiatives are praiseworthy, it is important to consider the funding by liquor regulating authorities, breweries or liquor companies, of service agencies which have as part of their mandate prevention of handicaps such as FASD. Full information is not available as to how the "arm's length" nature of these arrangements is protected. While service agencies do not appear to advocate for liquor product warning labels, it must be acknowledged that they, like liquor companies, brewers, and regulators, do advocate for responsible use of alcohol. Perhaps a characteristic of corporate social responsibility among liquor companies, breweries, and their regulating authorities is to fund prevention and treatment of FASDs, in order to mitigate the damage their teratogenic products have caused over the generations and are causing currently.[104] The amount contributed, however, in no way has approached the costs of remedying the damages. Canada's brewing industry spent, according to available statistics, about $10 million in one year on "responsible use" campaigns; this expenditure must be viewed in the context of their $ 4.6 billion in annual sales and the $100 million spent on advertising to promote use of their beverages.[105] The Standing Committee on Health and Welfare estimated the entire alcoholic beverage industry in Canada in the same year spent $250 million in advertising, promotion and sponsorships, out of total of $9.6 billion in sales.[106] Increasing the amount contributed while maintaining "arm's length" arrangements between the alcohol beverage industry and funded service agencies is paramount, so that advocacy, ethics, and programming of needy service groups are not compromised in any way. Perhaps blind trusts could be established to promote substantial, fuller mitigation, ensuring no "strings" would be attached. *The Olivieri Report*[107] contains recommendations for protecting research ethics in the context of corporate sponsorship, which may be of relevance, particularly those regarding conflict of interest and protection of academic freedom. Protection accorded academic freedom may be extended to similar forms of freedom of expression in other contexts.

Mandatory product labeling of all alcohol products is a practical strategy that might address prevention. The liquor cartel[108] is very powerful, however, and has been so in Canada since the days of the fur trade with its concomitant "whiskey trade," continuing into the period of lucrative rum running across the American border during the U.S. prohibition era, 1921-33, to current resistance to the use of warning labels. This cartel has evaded product labeling, partly through sponsoring research and harm prevention initiatives in partnership with needy service agencies. However, as noted, money donated by the cartel to captive worthy causes neither approaches the value of the profits it gleans, nor begins to address damage caused by the intoxicating, addictive, teratogenic substance it purveys.[109]

---

[103] *Saskatchewan Liquor and Gaming Authority 2002-2003 Annual Report*, at 9.

[104] *Ibid.* It is noted that SLGA increased its FAS public awareness initiatives to $15,000 from $10,000 in previous years. No other specific mention was made of any further contribution by SLGA to FAS or SIPH in the 2002-03 Annual report; According to an e-mail received from Motherisk on September 15, 2003, susan.santiago@sickkids.ca, Motherisk receives $150,000 annually from Canada Brewers' Association (CBA) to help fund its toll-free Substance Use Helpline (1-877-FAS INFO) and to sponsor Fetal Alcohol Canada Expertise (FACE). According to the Motherisk website, retrieved Oct. 16, 2003 from the World Wide Web, http://www.motherrisk.org, CBA also funds the FAS Resource Centre at the Canadian Centre for Substance Abuse. At the Motherisk web-site, CBA reports having spent over $100 million in promotion of responsible drinking over a ten year period.

[105] *Supra* note 68. Standing Committee on Health & Welfare, Social Affairs, Seniors & the Status of Women, "Foetal Alcohol Syndrome," 3rd Session, 34th Parliament, No.s 10-22, 1992-1993 Index, 1-29 at 14-15.

[106] *Ibid.* at 1 and 15. (Standing Committee on Health & Welfare).

[107] *Report of the (CAUT) Committee of Inquiry in the Case Involving Dr. Nancy Olivieri, the Hospital for Sick Children and the University of Toronto, and Apotex Inc.* Recommendations 1, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, 24, 25, 27, 30, and 31. Retrieved on September 20, 2003, from the World Wide Web: http://www.caut.ca/english/issues/acadfreedom/Olivieri%20Inquiry%20Report.pdf. January 22, 2004, the Federal government announced the formation of a National Ethics Research Review Board for research dealing with human subjects.

[108] Barber, K. (Ed.) *The Canadian Oxford Dictionary*, 2001: "Cartel" is used, not in the older sense of price fixing among a group of manufacturers, but in the newer sense of "political combination between parties." Such combination is intended here to include the manufacturers, distributors, retailers, and government regulators.

Education is another important strategy of prevention. The Frontier School Division in Manitoba has implemented a curricular initiative in the way of fetal alcohol prevention, "Making the Right Choices," for grades 5-8:[110]

- The Grade 5 curriculum deals with awareness of alcohol and tobacco use and accompanying risks during pregnancy. Learning techniques recommended include: opinion polls, information sheets about FASDs, reading and discussing a short story entitled *Jocelyn's Island* (the story of a young Aboriginal girl who becomes concerned about her pregnant sister who is going to parties), learning definitions of FAS and ARND and related vocabulary, the writing of imaginary letters to a pregnant friend explaining to her why she should stop drinking, and the making of posters about the risks of drinking during pregnancy to be displayed in the community.

- The Grade 6 curriculum expands upon the diagnostic terms FAS and ARND and other terminology, explores the reasons why some people drink, involves the students in research about FAS and ARND, and presents a short story entitled *Jeremy and Joey*, about step-brothers, one of whom has FAS, and how brother, family and school learn to respond effectively to his needs.

- The Grade 7 curriculum reviews FASD, and examines the role of media advertisements and messages regarding alcohol and drug use. Appropriate responses to these media messages are drafted by the students.[111]

- The Grade 8 curriculum introduces the mechanism of how alcohol is transferred to the fetus and its mode of attack on the fetus at various stages of development. The role of males in FASD causation is discussed. The culminating student activity is the preparation of brochures about fetal alcohol syndrome.

A sensitive approach to curriculum is recommended, to avoid stigmatizating or frightening those involved, including adopting respectful language, tone and substance. Parents are to be informed in writing that the prevention curriculum will be taught. Before discussing sensitive and confidential topics, teachers are to establish clear ground rules to prevent personal comments and hurt feelings. Individual students are allowed to skip sensitive sections and support is to be provided for these students as required.

An international, national, and provincial initiative aimed at prevention has been the declaration that "Fetal Alcohol Syndrome Awareness Day," is to begin September 9 at 9:09 a.m. each year (the ninth minute, of the ninth hour, of the ninth day, of the ninth month). At this time, people are requested to show respect for the nine months each individual spends in the womb.[112]

---

[109] *Supra* note 68. Standing Committee on Health and Welfare, Social Affairs, Seniors and Status of Women, 34th Parliament, 3rd Session, No. 10-22 index 1992-1993, 1-29, "Foetal Alcohol Syndrome. A preventable Tragedy." (Ottawa: Queen's Printer for Canada, 1988-1992).

[110] Teaching Units on FAS, lbraun@frontiersd.mb.ca

[111] Alcohol and Gaming Commission of Ontario, *Liquor Advertising Guidelines: Liquor Sales Licensees and Manufacturers* (Toronto: Alcohol and Gaming Commission of Ontario August, 2003). The *Liquor Licence Act*, R. S.O. 1990, c. L-19, s. 38(1) states that no person shall advertise liquor except in accordance with the regulations enacted pursuant to this *Act*. Holders of liquor sale licences or manufacturers of liquor are responsible to ensure that the advertising carrying its business or brand name, or endorsed by it, falls within the parameters set out in the regulations and in these guidelines. Otherwise, disciplinary proceedings under the Registrar of Alcohol and Gaming may result. "Liquor" means beer, wine and/or spirits or any combination thereof. All advertising must be consistent with the principle of depicting responsibility in use or service of liquor. Responsible advertising does not imply that consumption of liquor is required to obtain or enhance social, professional or personal success; athletic prowess; sexual prowess, or any other opportunity or appeal; or enjoyment of any activity; fulfillment of any goal; or resolution of social, physical or personal problems. It should not appeal, either directly or indirectly, to persons under the legal drinking age, and should not associate or depict the consumption of liquor with driving a motorized vehicle, or with any activity that requires care and skill or has elements of danger. Advertising that is beyond the permissible scope of the *Guidelines* may result in disciplinary proceedings under the Registrar of Alcohol and Gaming and/or the issuance of an order of cessation thereunder or may result in prosecution. No doubt this *Act*, *Regulations* and *Guidelines* are models for Canadian jurisdictions. For instance the *Liquor Advertising Rules of Conduct Regulation*, Man. Reg. 125/95 under *The Liquor Control Act*, C.C.S.M. c. L160, 1995, has similar provisions to the above. In addition, *Saskatchewan Liquor and Gaming Authority Media Advertising Policy* requires prior approval from the Liquor Board of all related advertising. The criteria for approval are similar to those aforementioned.

[112] *The Fetal Alcohol Syndrome Awareness Day*, Chapter F-13.101, S.S., 2002

3.2 SECONDARY PREVENTION

Secondary prevention focuses on harm reduction to the fetus during pregnancy. Although in secular societies, termination of pregnancy may be an option, this is not usually consonant with traditional Aboriginal cultures which view children as a special gift from the Creator. The favoured option is to offer an expectant mother access to treatment for her addictions.

Pregnant women are screened for risk when they access medical care. Risk factors related to potential alcohol consumption screened for include: poverty, poor prenatal care, poor nutrition and health, poly-drug use, prostitution or other involvement in the sex-trade, parent-partner-peer problems, psychiatric concerns, and prior abuse.[113]

Commissioned by The Prairie Women's Health Centre of Excellence, Caroline Tait authored *A Study of the Service Needs of Pregnant Addicted Women in Manitoba*,[114] which included the identification of barriers for pregnant women seeking addiction treatment. Barriers identified include:

- psychological barriers (shame, fear, alienation);
- barriers related to a woman's children (lack of childcare, fear of having children apprehended);
- barriers related to social support networks (after care services are required, otherwise a client may be isolated with an abusive, addictive partner upon termination of the treatment program);
- barriers related to socio-geographic factors (costs of travel to treatment);
- barriers related to stigma (the stigma associated with alcohol/drug use not under control, especially when involving a female); and
- barriers related to treatment programs themselves (similar programs with which the client has had previous experiences may have been philosophically and culturally inappropriate).

A forgiving, welcoming, and helpful attitude manifested by service-providers is important in eliminating another possible barrier. Disadvantaged people sometimes perceive extant health, justice, and social service agencies as judgmental, cold, and intimidating. Disadvantaged women may hesitate to access services for fear of losing welfare benefits or of having their children apprehended.[115] In some cases, women have been forcibly detained,[116] even sterilized against their will, as has transpired recently among Indigenous women of Brazil,[117] and was performed on the mentally disabled in Alberta a generation ago.[118] In present day Afghanistan, in some areas, unmarried women face being apprehended, taken to hospitals, and coerced into enduring gynecological examinations to determine their chastity.[119] Poverty-stricken women in some parts of the world fear that their children will be abducted and sold through either adoption or prostitution.[120] Knowledge of situations such as these may render marginalized women wary of accessing services.

---

[113] *Supra* note 56. Philp, M."Middle-class FAS: A Silent Epidemic?" Globe and Mail, February 1, 2003. Middle class women may avoid detection for these risk factors. However, they do have the economic wherewithal to consume considerable amounts of alcohol. Their affected offspring are more likely to be diagnosed as ADHD, rather than with one of the FASDs, and they are better able to afford private schools or tutoring and the kinds of supports and advocacy that affected children require. Retrieved February 3, 2003 from the World Wide Web: http://www.globeandmail.com

[114] Prairie Women's Health Centre of Excellence, retrieved February 3, 2003 from the World Wide Web: http://www.pwhce.ca/epaw.htm

[115] *Supra* note 14. Ridd, D. *Pregnant Addicted Women: Manitoba's Experiences.* (Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable (September 9, 2002). *FAS: When the Children Grow Up*, Retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com)

[116] *Winnipeg Child and Family Services (Northwest Area v. D.F.G.* (1997), 152 D.L.R. (4th) 193 (S.C.C.). An expectant, addicted mother was forcibly detained in a hospital to protect her unborn child. The Supreme Court held that such detention violated her *Charter* rights.

[117] Johnson, B. E.,."Stolen Wombs: Indigenous Women Most at Risk." 2000 *Native Americas* 38-42; and CBC News, November 4, 2002, Forced Sterilization of the Indigenous Women of Brazil, Retrieved November 5, 2002, from the World Wide Web: http://www.CBC.ca

[118] *The Sexual Sterilization Act, R.S.A.*, 1928, allowed for the sterilization of mentally disabled people confined to institutions within the province of Alberta (several other provinces and many states had similar laws at that time). In 1996, Leilana Muir was awarded $1,000,000 in damages for wrongful confinement and wrongful sterilization; 700 other claimants are awaiting the dispositions of similar claims (*Muir v. Alberta* [1996] A.J. No. 37).

[119] Leopold, Evelyn (December 17, 2002). "Post Taliban Warlords Oppress Afghan Women." Reuters News Agency, Human Rights Watch Report. Retrieved January 5, 2003 from the World Wide Web: http://news.findlaw.com/international/s/20021217/afghanwomendc.html

[120] General Assembly of the United Nations, 85th Plenary Meeting, 20 December 1993, "Need to adopt efficient, international measures for the prevention of sale of children, child prostitution and child pornography." A/RES/48/156. Retrieved January 27, 2004, from the World Wide Web: http://www.un.or/documents/ga/res/48/a48r156.htm

Judgmental attitudes have been associated with maternal consumption of alcohol during pregnancy. The presumption of the personal autonomy of the expectant mother enabling her to abstain from alcohol use underlying these attitudes is questionable. In the context of an addictive, intoxicating substance, combined with such social conditions as poverty, abuse and racism, the personal autonomy of such women may be greatly diminished. Furthermore, product warning labels, virtually the last line of defense before damage to a developing fetus, are, in Canada, not utilized.[121] In addition to addressing listed barriers, implementation of Aboriginal employment equity would go far towards promoting both primary and secondary prevention through addressing underlying social conditions that perpetuate the problem.

Pharmacological intervention (antioxidant therapy) is another technique of harm reduction during pregnancy. Oxidative stress is an important mechanism in the prenatal brain injury of FAS/E fetuses. Antioxidant treatment strategies for preventing or attenuating ethanol-induced[122] oxidative stress in fetal life and its impact on brain functioning in postnatal life have been proven effective in studies involving cell cultures and animal models. In such studies, pharmacological doses of the antioxidants, vitamin C and E, were administered, along with varying doses of ethanol. Although an antioxidant protective effect against ethanol has been observed in animal studies, no data yet available indicates whether this prophylactic treatment can benefit pregnant women. Antioxidant treatment during pregnancy is not new; antioxidants such a vitamins E and C have been used in the treatment of pre-eclampsia and not found to be teratogenic. It follows that treating women who abuse alcohol during pregnancy with antioxidants such as vitamin supplements may have a protective effect against FAS/E. As well there is the benefit of addressing certain nutritional deficits that may be present, without concomitant negative effects.[123]

3.3 TERTIARY PREVENTION

Tertiary prevention rests on early diagnosis of disorders along the FASD. Essential to the diagnosis of FAS/E is confirmation of maternal alcohol consumption during pregnancy. This may be problematic. Maternal self-report is subject to denial because of stigma and guilt. When diagnostic issues arise for the first time in later life, the birth mother may be absent. A recent breakthrough has transpired in the field of meconium studies. Meconium is the first "stool" or bowel content passed by the neonate. Chemical analysis of the meconium from the newborn's diaper can measure both gestational timing and magnitude of fetal ethanol exposure resulting from maternal drinking during the last two trimesters of pregnancy. An enzymatic reaction occurs between fatty acids in the mother's body and the ethanol she consumes, to form reliable biomarkers of fetal ethanol exposure in the meconium. Characteristic patterns of fatty acid ethyl esters (FAEEs) form, wherever maternal alcohol consumption is more than minimal, and these patterns of FAEEs can confirm and elucidate prevalence of alcohol consumption by pregnant women. Such patterns of FAEEs can provide objective, quantitative, corroborative evidence of ethanol consumption required for positive diagnosis of FAS/E, together with the presence of other criteria required to confirm the diagnosis.[124]

[121] *Supra* notes 100 and 101. (Exception: alcohol product warning labels are used in the Yukon and the Northwest Territories. Thursday April 18, 1996- Parliamentary Committee: Food & Drugs (2), http://www.parl.gc.ca/committees352/sfda/evidence/02_96-04-18/sfda02_blk101.html; and Yukon Liquor Corporation, Social Responsibility, http://www.ylc.yk.ca/socialresp.htm.)

[122] Ethanol is the chemical name for the alcoholic component of intoxicating beverages.

[123] *Supra* note 59. Cohen-Kerem, R. and Koren, G. and *Antioxidants and Fetal Protection Against Ethanol Teratogenicity*, (Third Annual Fetal Alcohol Canadian Expertise (FACE) Roundtable, September 9, 2002, *FAS, When the Children Grow Up*, retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com.)

[124] Chan, D. *Neonatal Screening for Prenatal Alcohol Exposure* (Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable, September 9, 2002, *FAS, When the Children Grow Up*, retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com).

3.4 PREVENTION OF SECONDARY DISABILITIES

Various programs have been designed and implemented to address prevention of the development of secondary disabilities post-natally. The pioneer researcher in this field is A. P. Streissguth, Seattle, Washington. Streissguth developed the Parent-Child Assistance Program (P-CAP), and its precursor, the Birth to Age Three Program[125] Such programs typically involve an intensive, paraprofessional mentorship over a minimum three-year period, for high risk mothers with addiction problems and/or previously affected births. Paraprofessional mentors mobilize support for healthy lifestyles through post-treatment care, and help to attenuate the development of secondary symptoms in the children. For example, Norway House Cree Nation, a northern Manitoba reserve community, has developed a program along lines similar to Streissguth's to provide culturally appropriate supports to parents and children. This program is termed Steps and Stages for Mom and Baby. In conjunction with a school division, it utilizes the Parents as Early Educators or PEER program that bridges the transition into the school years. Manitoba health has implemented a similar program, STOP FAS, at four sites: Winnipeg (2 sites), The Pas, and Thompson.

Toronto's Breaking the Cycle (BTC), delivers similar mentoring programs, as well as promoting partnering among prenatal, perinatal, and postnatal service networks, entailing: housing, physical and mental abuse reduction, healthy babies programs, nutrition, and substance abuse recovery. BTC utilizes a single access model to provide various services: childcare, mentoring, basic needs support (daily breakfast and lunch, transportation, clothing exchange), mental health counseling, family medicine, addictions medicine, as well as accompaniment to appointments.

In British Columbia, Raymond and Belanger completed a qualitative study of community-based treatments provided to young adults who were FAS/E. Strategies investigated included: circles of support, lists, memory and organizational aids such as calendars, tracker systems and homework books, and goal setting and planning tools. The strategies showed potential, depending on the time commitment and the skills of the volunteer mentors (often parents) who attempted to implement them. Raymond and Belanger contended that support services should not be linked to IQ, as if often the case, but rather should be related to the level of dysfunction or maladaptivity exhibited by the client. Many FAE clients possess normal IQs, but are seriously dysfunctional, because of the neurotoxic effects of alcohol (to which they were exposed parentally) on selective parts of their developing brains, resulting in organic brain impairment. Such dysfunction or maladaptivity is best measured by the Vineland Adaptive Behavior Scales[126] and the Scales of Independent Behavior Resided,[127] rather than by any IQ test. A paradox arises because, at a superficial level, individuals with FAE may appear and sound normal, and test normal in IQ (or at least higher than the usually 70-IQ benchmark for receipt of government support services), but, be maladaptive, nevertheless, in everyday functioning, to the extent of requiring intensive, ongoing supports.[128]

The David Livingstone Community School in Winnipeg, MB, provides a partial answer to some of the problems facing children with FASD, through currently segregated, and, hopefully, in future, integrated school programs. The staff employs strategies and practices found by them to be effective in educating such children.[129] The programs, from kindergarten to grade six, are organized around concepts of providing an *external brain.*[130] External brain, coined by Dr. Sterling Clarren, refers to the use of capable, personal mentors and effective memory aids to help FASD individuals compensate for memory deficits, and other mental gaps, as well as lack of impulse control, and poor judgment.

---

[125] *Supra* note 18 at 270-275. (Streissguth, *A Guide for Families and Communities*)

[126] Sparrow, S.; Balla, D.; & Cichetti, D. *Vineland Adaptive Behavior Scales (VABS)* (American Guidance Services: Circle Pines: MN, 1984).

[127] Bruininks, R. H., Woodcock, R.; Weatherman, R., and Hill, B. *Scales of Independent Behavior Revised* (Scarborough, ON: Nelson Thomson Learning, 1996).

[128] Raymond, M. and Belanger, J. Literacy-Based Supports for Young Adults with FAS/FAE. (132 p.) British Columbia: Joint Projection of the National Literacy Secretariat, Human Resources Canada, Minister of Advanced Education, Province of British Columbia. Retrieved October 2, 2002, from the World Wide Web: http://www.nald.ca/fulltex/lbsupport/Doc/pdf/.

[129] School of Hope: Teaching Kids with Fetal Alcohol Syndrome, retrieved from the World Wide Web, September 12, 2003: http://www.come-over.to/FAS/schoolofhope.htm.

[130] External Brain, retrieved from the World Wide Web September 12, 2003: http://www.come-over.to/FAS/externalbrain.htm.

April 1, 2001, KidsFirst was initiated in Saskatchewan. The program is based on research evidence that indicates that the early years, particularly birth to age three, are critical in determining the future outcomes of children—their long-term social, emotional, cognitive, and health functioning. When children do not get a good start, the long-term consequences include: poor educational achievement, low employment levels, low income levels, increased reliance on social support systems, increased involvement with the justice system, and poor health outcomes. When children receive a good start, they are more likely to become well functioning, contributing members of society.

KidsFirst is Saskatchewan's response to the federal funding commitment following the Federal/Provincial/Territorial Agreement reached in September, 2003. KidsFirst direction and framework is provided by the Early Childhood Development Branch through the Departments of Learning, Health, and Community Resources and Employment. The program is implemented and delivered at the local level by third party agencies. KidsFirst supports families in vulnerable circumstances to become stronger families, by enhancing parenting knowledge, providing support, and building on family strengths.

KidsFirst in Saskatchewan is a voluntary program that targets vulnerable families found in community clusters. There are nine KidsFirst sites in the province: Meadow Lake, Nipawin, North Battleford, Yorkton, Moose Jaw, Prince Albert, Regina, Saskatoon, and all of Northern Saskatchewan. Only vulnerable pockets within the nine sites fall under the aegis of KidsFirst. This is so because when families are living under difficult circumstances, such as low income or exposure to abuse, caring for children becomes even more problematic.

To be eligible to be part of KidsFirst, in addition to serviced location, families must have at least one child under the age of 5 years. KidsFirst includes a number of key components: prenatal referral and support, universal in-hospital screening, home visiting, mental health and addictions services, enhanced early learning, and childcare and family support opportunities. The prenatal component focuses on prevention of FASD and reducing the impact of alcohol on pregnancy. Basically, this component is a prenatal outreach program designed to support pregnant women using drugs and alcohol, by providing them with nutrition supplements and enhanced prenatal supports. The intent is to reduce the impact of alcohol on the fetus and to engage the women in addictions treatment so that their subsequent pregnancies are alcohol-free.

The universal, hospital-based, screening program for newborns and their families is used as a first indicator of vulnerability. The home visiting component includes once a week visits. Mental health and addictions services are specifically dedicated to KidsFirst clients, as well being provided in a non-traditional manner. The community component of KidsFirst is provided through partnerships with local agencies for such services as: enhanced early learning, childcare opportunities, and supports such as literacy, parenting skills, further education, food, security, and transportation. KidsFirst works with families to help them address many of the determinants of health.[131] Hopefully, Kids First will provide its clients with a better start in life, and will be able, incrementally, to extend its mandate province-wide, without age limitation, in order to accommodate all families with children, young persons, and dependent adults with extensive needs such as FASD presents.

An Interdepartmental Committee has been structured by the Government of Saskatchewan with the task of framing a strategic plan to provide integrated services for individuals with FASD. Participating departments include: Health, Learning, Community Resources and Employment, Justice, Corrections and Public Safety, and Aboriginal and Intergovernmental Affairs. "A Strategic Plan," dealing with prevention, assessment, support, and training is due April, 2004. An interim report, "Results from FASD Discussion, Summary Report," is to be completed by February, 2004. The interim report will deal with the results of community consultations, meetings, surveys, and conference forums held since the committee was structured in 2002. Health Canada also has fashioned a National FASD Framework. [132] The Canada Northwest FASD Partnership, comprised of Alberta, Saskatchewan, Manitoba, Yukon, Northwest Territories, Nunavut, and British Columbia, co-operates inter-jurisdictionally on prevention and treatment issues. These initiatives are critical as FASDs require interagency

[131] Telephone Conversation, January 7, 2004, and e-mail communication with Elaine Clark, Sask. Learning Early Child Development Unit, January 19, 2004, eclark@sasked.gov.sk.ca. KidsFirst web-site, retrieved January 7, 2004, from the World Wide Web: http://www.sasked.gov.sk.ca/echild/ecd_annual_report_2001-2.pdf.

[132] Telephone conversation with Wanda Lyons, Member of Interdepartmental Committee on FASD, January 7, 2004; and e-mail communication with Pat Inglis, Department of Health, Chair of Interdepartmental Committee on FASD, January 19, 2004. A meeting has been requested.

and inter-jurisdictional supports, due to the interdisciplinary nature of their disabilities which transcend boundaries.[133] Specialized strategies for FASDs are required, because of the distinctive nature of their secondary disabilities, and the gravity of the problems they may face. Strategies need to be implemented quickly, before more disabled young persons become marginalized and/or criminalized because of their disabilities; such a goal requires cooperative effort.

Evolving evidence, although elusive, seems to indicate that including the spiritual dimension is effective in producing a balanced life. *Generation at Risk: Growing up in an Era of Family Upheaval*, a study by sociologists Paul Amato and Alan Booth,[134] found *inter alia* that the children of families who practiced a religion were more settled and stable, had more positive self-concepts, and were more optimistic about their futures, even in today's uncertain times, than were the children in a control group. One would expect similar results from the practice of traditional Aboriginal beliefs. The spiritual dimension might be expected to play a more critical role for Aboriginal youth, who, because of their heritage rooted in colonial practices such as residential schools and child welfare policies, face cultural as well as family breakdown. In a related vein, Ralph Mason, at the Regional Psychiatric Centre in Saskatoon, found support for the healing nature of the traditional Aboriginal Sweat Lodge Ceremony among sexual and violent offenders (albeit, not formally diagnosed with FASDs).[135] In a series of studies, including the landmark study, "Cultural Continuity as a hedge against suicide in Canada's First Nations," Chandler & Lalonde[136] discovered lower suicide rates in First Nations communities in British Columbia where culture and self-determination were strong. Young persons in these communities felt that there was a future for them and their way of life, over which they had some control.

Restorative Circles Initiative (RCI) is a new pilot project in Saskatoon sponsored by the Department of Justice Canada - Youth Justice, subsequent to the implementation of the YCJA and its emphasis on reducing the number of young persons in custody, and with the support of the local King George Community & School Association. The Director, Don Meikle, thinks that the program has potential for dealing with FASD youth. Inclusive of family and community, RCI assists youth involved with the justice system to find an alternative method of dealing with problems, through healthier life styles and better choices, while maintaining respect and dignity for themselves and others. The circles that RCI structures are based on the values of restorative justice, and may be either pre-sentence circles (with victims involved), or post-custody circles (to support the youth during a period of rehabilitation and reintegration into the community). Attending at the circles may be the youth and victim(s), their families, Elders, volunteers from the community, justice staff, and a judge or facilitator. Pre-sentence circles are ordered by a judge seeking recommendations for sentencing and in search of resources to support the sentencing option. Volunteer mentors, trained by RCI, particularly positive peer roles models, are found to be effective with FASD youth and become part of the integrated, interagency team selected to work with the youth. The ideal is for the mentor to provide ongoing follow-up with the youth, particularly following custody, for a minimum six-month period. The mentor can link the youth up with members of the integrated service team as required. A great need exists for such programs throughout Saskatchewan.[137]

---

[133] Canada Northwest FASD Partnership. Retrieved January 28, 2004, from the World Wide Web: http://www.faspartnership.ca/aboutus/page.cfm?pg=index.

[134] Amato, P. & Booth, A. *Generation at Risk: Growing up in an Era of Family Upheaval* (Cambridge, Mass.: Harvard University Press, 1997).

[135] Mason, R. *The Healing of Aboriginal Offenders. A Comparison Between Cognitive Behavioral Treatment and the Traditional Sweat Lodge Ceremony*, Unpublished Masters' Thesis, University of Saskatchewan, Saskatoon, 2000.

[136] Chandler, M. J. & Lalonde, C.E. "Cultural Continuity as a Hedge Against Suicide in Canada's First Nations" (1998) 35(2) Transcultural Psychiatry, 193-211; and Chandler, M. J., Lalonde, C.E., & Sokol, B. "Continuities of Selfhood in the Face of Radical Development and Cultural Change. In L. Nucci, G. Saxe, E. Turiel (Eds.), *Culture, Thought, and Development*, pp. 65-84 (Mahwah, NJ: Lawrence Erlbaum Associates, 2000).

[137] Pamphlets, Project Description, and Interviews with Restorative Circles Initiative, 206-119 4th Avenue South, Saskatoon, SK, S7K 5X2.

4. SOCIAL CONSTRUCTION OF FASD AND ITS IMPLICATIONS

Fetal alcohol spectrum disorders (FASDs) to a large extent are socially constructed.[138] It is illuminating, therefore, to discover the perspectives of differently situated observers regarding FASDs, including the viewpoints of affected individuals. Because of the correlation between law breaking and the presence of FASDs in individuals, there tends to be a moral undertone to the social-construction of the condition.[139] To observe whether, with effective intervention for FASDs, any tendency of the variously situated observers to perceive the illness as a moral disorder will be attenuated or even eliminated, will prove intriguing.

The moral dimension was originally connected (and continues to be connected) to the etiology of the disease, through repugnance aimed at maternal consumption of alcohol during pregnancy and resultant fetal damage. Associated judgmental attitudes have affected access to treatment adversely for both addicted mothers and affected offspring. Presumption of personal autonomy or free will, on the part of an expectant mother, to abstain from alcohol consumption is questionable, as explained previously. Marginalized women deemed to be at risk are subject to the surveillance of the Foucauldian medical gaze,[140] a glare more penetrating than any scrutiny given liquor manufacturers, government regulators, or root causes of the marginalization of affected persons:

> [T]he patient becomes subject to the medical gaze. For Foucault (1975), it is through the medical gaze that the patient's body is constructed as a particular archetype of illness. The medical gaze is a product of a dominant discourse in scientific medicine that champions the importance of expert medical practitioners using visual cues to assess and monitor patients' bodies. [Foucault, M. (1975) *The Birth of the Clinic: An Archaeology of Medical Perception.* New York: Vintage.]

Rather than transfixing victims, the "medical gaze" should consider, with a view to their elimination, barriers facing pregnant women seeking treatment of their addiction, including: psychological barriers of shame, fear, and alienation; unavailability of childcare; fear of having children apprehended were mothers to admit to being addicted; lack of after-care; sociographic factors such as costs of travel to treatment; the powerful stigma attached to being pregnant and addicted; and barriers related to treatment programs, such as whether such programs are woman-centered and culturally appropriate, and taking into account any impact of negative past experiences with similar programs.[141]

A case occurred where an expectant, addicted mother (with three other children in care, two of whom were FAS affected) was forcibly detained in a hospital to protect her unborn child. The Supreme Court held such detention illegal, as the fetus was not a legal person, and the detention order would impinge on the mother's right to liberty.[142] Ironically, the very fetus the Crown was seeking to protect through the detention order could have been legally aborted by that mother under Canadian law had she so desired. The mother, Ms. G., had sought treatment voluntarily prior to the detention order, but when it was not available had succumbed to her addiction. Once hospitalized, she complied of her own volition with the detention order; when it was withdrawn, she remained in hospital until after the baby's birth. Her baby was born, apparently unharmed. With 24 hour in-home support, she was able to maintain her sobriety and to care for the child.[143]

---

[138] *Supra* note 15. (Auton, BCCA, 2002) at para. 51: Writing for the majority, Madam Justice Saunders describes Autism Spectrum Disorders (ASDs) as socially constructed handicaps, rather than the result of adverse effects discrimination, the term used to describe the dynamics of the discriminatory effect in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624.

[139] Armstrong, E.M. "Diagnosing Moral Disorder: The Discovery and Evolution of Fetal Alcohol Syndrome" (1998) 47(12) Soc. Sci Med. 2025-2042.

[140] Foucault, M. *The Birth of the Clinic: An Archaeology of Medical Perception* (New York: Vintage, 1975), cited in Lupton, D. "The Social Construction of Medicine and the Body" in C. Bird (Ed.), *The Handbook of Medical Sociology* (New Jersey: Prentice Hall, 2000), 50-63 at 55.

[141] *Supra* note 114. Tait, C. *A Study of Services Needs of Pregnant Addicted Women in Manitoba* (Winnipeg, MB: Prairie Women's Health Centre of Excellence, 2000).

[142] *Supra* note 116. *Winnipeg Child and Family Services, Northwest Area v. D.F.G.* (1997), 152 D.L.R. (4th) 193 S.C.C.

[143] This information pertains to the time period of the Court's jurisdiction, and to the extent of the information available to the Court.

The Royal Commission on Aboriginal Peoples recorded the following testimony, in **vol. 3, Gathering Strength**[144] at pages 132-33:

> Children with FAS or FAE are often difficult babies, especially if they are withdrawing from the alcohol that surrounded them in the (womb). If the mothers are still actively abusing alcohol, these children are often subject to attachment breaks, abuse, and/or neglect, and they often become involved with the child welfare system as foster or adopted children.
>
> . . . . .
>
> They are hard to care for, their disability is not understood, there are many peer and social pressures, no skills to fall back on . . . Currently we believe many adults (who were born) with FAS/FAE are either on the street or in jail. [page227] (*cited in D.F.G. at p. 37*)

Personal autonomy in women's lives has been eroded by the stress and trauma of colonization, and its paternalistic, misogynistic practices. Aboriginal women have been affected particularly adversely by restrictive, sexist legislation and policy, which has tended to exclude them differentially from status, band membership and governance, and concomitant benefits. As well, interference with the exercise of their maternal function that originated in residential schools continues with current child protection policies.[145] Resultant devaluation and loss of roles has rendered some of them rootless, subject to domestic violence at home and to racism and sexism in the larger community. Stressed, traumatized and marginalized, such women become vulnerable to alcohol abuse and addictions.[146]

Potential social value of research and education in this area lies in its possible positive impact on public opinion and policy resultant from greater understanding of individuals with fetal alcohol conditions and their need, not for incarceration, nor "boot camp" scenarios, but rather for holistic, community-based treatment. Community supports consistent with both the Aboriginal model and non-judgmental understanding of those with FASDs, their families and culture, are essential to produce more healthy individuals living within healthier communities, and to maximize the life adjustments of all concerned. Understandings so gleaned might extend to other individuals with other disabilities or mental disorders, eliminating at least some of the stigmatizing and marginalization to which they are subject, and reducing the cycle of crime experienced by segments of this population.

For FASDs, complicated diagnostic procedures, protocols, and standardized templates exist to measure precisely each facial and structural anomaly noted, and fix it at a certain growth percentile: for example, to be FAS, the palprebal fissues (width of eye openings) must be 2 standard deviations below normal for age,[147] and pictoral Likert scales are used for rating the thinness of the vermilion border of the upper lip when lips are closed with no smile, and the smoothness of the philtrum.[148] Also, the United States Institute of Medicine recommends a team approach to diagnosis of FAS, including *inter alia* participation of a neuropsychologist, and a pediatrician, and ideally a physical therapist, occupational therapist, speech-language pathologist, and social worker. For court-ordered assessments, to determine fitness for trial or the exculpatory existence of a mental disorder, there are elaborate diagnoses required. Paradoxically, few funds remain for treatment, including paraprofessional mentoring programs which are relatively low cost. Ironically, a patient, diagnosed and possibly stigmatized by a label, finds little treatment available to attenuate symptoms and perhaps reduce related stigmatization. Many

---

[144] (Ottawa: The Commission, 1996)

[145] The *Saskatchewan Children's Advocate Annual Report, April 2003*, indicates that as of March 31, 2002, 3300 children were in care of the Minister of Social Services under the *Child and Family Services Act*, and a further 1042 children were in care of the Minister but receiving services from the Indian Child & Family Service Agencies (ICFS) through the aegis of Indian and Northern Affairs. The Saskatchewan Children's Advocate Office's *Children and Youth in Care Review: Listen to Their Voices, Final Report*, April, 2000, Table 2, page 38, reports percentages of children and youth in care as of March 31, 1999, according to the following categories: 6.1% Metis, 2.8% Non Status, 57.8% Status, 2.3 % unknown, and 31% Non-Aboriginal, out of a total of 3030 in care, excluding 179 cases serviced by ICFS.

[146] Hamilton, A. & Sinclair, C., "Chapter 13, Aboriginal Women," *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People* (Altona, MB: D.W. Friesen and Sons Ltd., 1991) at 475-497.

[147] Koren, G., Nulman, I., Chudley, A.E., & Loocke, C. "Fetal Alcohol Spectrum Disorder," *Canadian Medical Association Journal*, 2003, at p. 1181.

[148] *Supra* note 63. (Astley & Clarren)

FASDs experience their first encounter with diagnosis through the Criminal Courts; at this juncture, it is generally too late for optimum early intervention. With the paucity of treatment availability of any kind, it is the proverbial "too little, too late." The status quo is costly and ineffective; certainly, there is a need for early diagnosis and screening, but also for effective early intervention and treatment, avoiding costly (in both human and monetary terms) encounters with the Criminal Court wherever possible. The curious lack of effort directed at treatment has been commented upon by the United States Institute of Medicine's Committee to Study Fetal Alcohol Syndrome:

> There has been a curious lack of enthusiasm for targeted efforts directed at the prevention of secondary disabilities. The view that intervention may not be useful in children affected by alcohol is inconsistent with the attitude taken toward other groups of high-risk and disabled children. Few systematic attempts have been made to intervene with alcohol-affected children to test the possibility that such strategies would be effective in producing more positive outcome.[149]

Inexplicably, affected children, exposed *in utero* involuntarily, nevertheless suffer stigmatization, aggravated by the scarcity of treatment services. Beyond blaming affected individuals and, particularly, their mothers, little has been done to alleviate causal factors, such as social conditions. Alcohol itself has been "medicalized," appearing seemingly out of nowhere in the discourse, the "innocent agent" consumed by a so-called "blameworthy" mother whose consumption it is that causes damage to her fetus. Manufacturers and government regulators of this alcohol are almost excluded from the blaming discourse, though they benefit from the production and sale of alcohol to the tune of billions of dollars annually.[150] The Crown profits without requiring the industry to use product warning labels, or without adding product warning labels themselves, to an intoxicating, addictive, and teratogenic product.[151] Perhaps the etiology itself of FASDs is socially constructed; if so, it requires considerable deconstructing, to eliminate the misplaced moral dimension that presents a formidable barrier to treatment of mothers and their affected children. A moral dimension is best removed altogether from scientific/medical discourse, to be replaced by a non-judgmental, pragmatic, approach to solutions.

Susan Sontag[152] asserts that there is nothing more punitive than giving a disease a moralistic meaning. She discusses the "blaming of the victim" that occurred with HIV/AIDS; initially, sufferers were seen as gay men, perceived to have engaged in risky activities, who had thus "authored their own misfortune." Such stigmatizing attitudes delayed the search for treatment and cure.[153]

Equity issues such as class, race, gender, age, sexual orientation, and disability may operate to deny access to appropriate treatment.[154] Many FASDs are triply disadvantaged in being children, disabled, and marginalized. They cannot advocate effectively for themselves. To compound matters, many of them in care or child protection, have been moved from home to home, without a parent or concerned mentor to advocate for them. Even if not in care, if their mothers are marginalized, suffer various forms of gender discrimination, and face barriers to treatment for their substance abuse and addictions, effective maternal advocacy for children concerned is virtually eliminated.

---

[149] *Supra* note 53. Stratton, K., Howe, C., & Battaglia, F. (EDs.) Committee to Study Fetal Alcohol Syndrome, Division of Biobehavioral Sciences and Mental Disorders, Institution of Medicine. *Fetal Alcohol Syndrome, Diagnosis, Epidemiology, Prevention, and Treatment* (Washington, D.C.: National Academy Press, 1996) at 12.

[150] Statistics Canada, *Beverage and Tobacco Products Industries* 1988, Annual, Industry Division, November, 1991, Table II. The use of alcohol beverages in a variety of settings, is firmly entrenched in Canadian society. Also the production and sale of beer, spirits and wine comprise major industrial activities in Canada, as in other countries. Figures published by Statistics Canada show that sales of Canadian beer, spirits and wine in Canada in 1988 amounted to a total of more than 7.6 billion dollars; sales of Canadian beer, at almost 4.6 billion dollars, accounted for more than half this total. When imported products are included, the total value of Canadian sales of alcoholic beverages for 1988 rises to almost 9.6 billion dollars. In Standing Committee on Health and Welfare, Social Affairs, Seniors and Status of Women, 34th Parliament, 3rd Session, No. 10-22, index 1992-1993, Foetal Alcohol Syndrome, A Preventable Tragedy, (Ottawa: Queen's Printer for Canada, 1988-1992). Note: presently, similar statistics are indicated only in Kilolitres, not dollars, making such comparisons difficult.]

[151] Note: The present writer does not argue for prohibition, but for warning labels on alcoholic products, and for nonjudgmental, effective treatment of addicted mothers and their affected children. A suggested warning label might read: "Drinking alcohol while pregnant can cause birth defects."

[152] *Illness as Metaphor/AIDS and its Metaphors* (New York: Anchor, 1989) at p. 58.

[153] *Ibid.*

[154] Ferguson, L.G. *Deconstructing Fetal Alcohol Syndrome: A Critical Inquiry into the Discourse around Alcohol, Women, Ethnicity, Aboriginals and Disease*, Unpublished Master's Thesis, Carleton University, Canada, 1997.

5 RIGHTS DISCOURSE

5.1 SECTION 15 OF THE *Charter of Rights and Freedoms*: EQUALITY

A decision of Saskatchewan Provincial Court Judge Mary Ellen Turpel-Lafond, in which she attempted to mandate community-based treatment for a young person affected by FASD, served as a catalyst for this aspect of the research. The decision was overturned on appeal,[155] absent the admissibility, for procedural reasons, of a s. 15 *Charter of Rights and Freedoms*[156] challenge. The role of s. 15 of the *Charter* in mandating treatment for FASD affected individuals to accommodate their disabilities remains moot, pending further litigation. What is patently clear and merits repetition is that for individuals with mental disorders such as FASDs, carceral placements are not appropriate, as they render such individuals subject to negative peer influences, victimization, and consequent deterioration in their mental states, as discussed in Section 1.1.

5.2 THE LAW ANALYSIS: CONTEXT AND DIGNITY

The framing of the s. 15 *Charter* argument, extrapolated in the direction indicated by the Supreme Court (*Law v. Canada*, [1996] 1 S.C.R. 497), is a compelling route for mandating access to treatment essential for persons with FASDs.[157] The s. 15 analysis involves a broad, contextual study, informed by root causes, rather than a narrow, reductionist determination. Many factors related to the social, economic, political, and historical conditions and situations of persons with FASDs may be taken into account in such analysis, as well as the present circumstances and future prospects of those affected. Section 15(1) of the *Charter*, the particular subsection of s. 15 pertinent to the analysis, states:

> 15(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Those with FASDs may qualify under enumerated *Charter* grounds of disability (FASDs are both a mental and physical disability), age (especially if they are children, as children are usually more vulnerable than adults), and race (if non-white). The general purpose of s. 15(1) is to protect human dignity, which discrimination demeans (*Law, supra*). In fact, an act is not to be considered discriminatory under s. 15(1) unless it does demean dignity. Furthermore, the discriminatory act must be either legislative, or taken under statutory authority; discriminatory acts of a private person, private corporation, or other non-governmental actor, are not considered under the *Charter*. As health care providers, educators, and social service personnel, all act under statutory authority, were any of them to deny treatment to an FASD individual, that denial of treatment may be discriminatory under s. 15(1).

Aboriginals, the majority of FASDs, have suffered historical disadvantage through colonization. Excesses of the whiskey trade, followed by blanket Crown prohibitions of alcohol, are factors contributing to consumption patterns of binging and excess. That Aboriginal people continue to live subject to marginalizing socio-economic factors is demonstrated by social health indicators: diabetes, tuberculosis, heart, lung and kidney disease, addictions and fetal alcohol, youth suicide, infant mortality rates, longevity statistics, mental health, accidents and injuries, environment health, communicable diseases, education and employment levels, and others. These deleterious results reflect the intergenerational effects of colonization on Aboriginal peoples' lives. Residential schools, the sixties scoop, and subsequent child protection policies form part of this pattern. Many Aboriginal children, and other children with FASDs, are, or have been, subject to child protection orders or arrangements.[158] The state has a greater duty of care to such children than to others, an obligation deriving from the ancient *parens patriae* jurisdiction of the Court. This doctrine is based on the premise that the law has a special duty to protect and advantage dependent children (and other dependent individuals). Such children, unlike other children, have no one, save the court, to advocate for them, and are not of age or capacity to advocate for themselves.

---

[155] *R. v. L.E.K.*, [2000] SKCA 48.

[156] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982, c. 11.

[157] *Supra* note 1. A full analysis of this process was attempted in the author's LL.M. research, and is ongoing as insights and litigation emerge. For a more thorough analysis, please refer to the author's thesis, *Barriers to Implementing Holistic, Community-Based Treatment for Individuals with Fetal Alcohol Conditions*.

Other disabled children, such as those with Autism Spectrum Disorders (ASDs) may be in protective care, but to a lesser degree. They more likely come from middle class homes, with parents, who because of income and education, are able to advocate for them. In a recent civil litigation in B.C.,[159] some parents of ASDs were able to mount a successful s. 15(1) claim under the *Charter* to have intensive early behavioral intervention funded by the province for their children.[160] Similar litigation is ongoing for ASD children in Ontario.[161] Favourable decisions may serve as precedents for FASDs seeking similar treatment, and would be included as such in the s. 15(1) analysis.

Treaties with Indians are an important constituent of the contextual factors to be considered in a s. 15(1) analysis for FASDs, for treaty beneficiaries who have been affected adversely by fetal alcohol exposure. Treaties were to be road maps to provide opportunities for treaty beneficiaries, including just distribution of goods, liberty, and opportunity. Particularly relevant is the alcohol ban contained in Treaties 1 through 6; Indian signatories and their missionary advocates wanted to protect Aboriginal people from the ravages of alcohol experienced during the whiskey trade which immediately preceded most adhesions to the numbered treaties. These treaty alcohol bans, recognized and affirmed in s. 35 of the *Constitution Act, 1982*, as part of the *Canada Act, 1982*, were not properly enforced by the Crown over the years. Thus Aboriginal children were involuntarily exposed to the teratogenic effects of alcohol *in utero*.

Treaty alcohol bans differ fundamentally from the blanket bans unilaterally imposed by the Crown under the *Indian Act*. Especially in the face of Crown infractions, Treaty alcohol bans continue to be upheld by the Courts.[162] Blanket bans, unilaterally imposed by the Crown, lost legal effect many years ago.[163]

The epidemiological aspect of in utero transmission of FASD is well documented, and is attributable, in part, at least, to Crown action or inaction. By not mandating warning labels on liquor bottles, by not providing effective treatment for those damaged by alcohol, and by not enforcing (and even themselves breaching)[164] constitutionally protected treaty alcohol bans, the Crown has not mitigated its responsibility to those adversely affected by its acts or omissions.

---

[158] Greschner, D. and Lewis, S., "Medicare in the Courts: *Auton* and Evidence-Based Decision-Making," Canadian Bar Review, publication pending. Note: two of the following sources were first cited and discussed in Greschner and Lewis' article. Habbick, B. F. et al, "Foetal Alcohol Syndrome in Saskatchewan: Unchanged Incidence in a 20-year period" (1996) 87 Can. J. Public Health, 204-7. Only 25.6% of children with FAS/E lived with their biological parents when last seen at a provincial child development centre. In E. A. Loney et al, "Hospital Utilization of Saskatchewan People with Fetal Alcohol Syndrome" (1998) 89 Can. J. Public health, 333-335, 88% of the hospitalized people with FAS/E were Aboriginal.

Supra note 145: According to the Annual Report of the Children's Advocate, in Saskatchewan, as of March 31, 2002, 3300 children were in the care of the Minister of Social Services under the *Child and Family Services Act*, and a further 1042 were in the care of the Minister receiving services from Indian Child & Family Service (ICFS) Agencies under the aegis of Indian and Northern Affairs. In a 1999 special study by the same agency, 3030 children and youth were in care comprised of 6.1% Metis, 2.8% Non Status, 57.8% Status, 2.3% unknown, and 31 % Aboriginal, excluding an additional 179 cases handled by ICFS.

[159] *Supra* note 15. *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2002] BCCA 538.

[160] *Auton (Guardian ad litem of)* v. *British Columbia (Minister of Health)*, [1999] B.C.J. No. 718 at para. 8-14. The form of early intensive behavioral intervention (IBI) requested by the petitioners was the Lovaas Autism Treatment (LAT). Numerous jurisdictions, including Alberta, Prince Edward Island, England, and a number of states in the United States, have recognized the LAT as an appropriate therapy for autism. The treatment is based on the work of Ivar Lovass, a psychologist at UCLA in California; he developed his method in the seventies and published the results of his research in 1987. The basic premise of his treatment is that people with autism can be taught, on a one-to-one basis, the skills that they lack, primarily through rewarding appropriate behaviors. The treatment is very intensive, about 40 hours a week, and to be effective, must be employed early in the child's life. Although the treatment costs $45,000.00 - $60,000.00 per year per child, Dr. Lovass estimated (1987) that the savings for each child would be $2 millions U.S. in care over the course of his or her life. Without effective treatment, the majority of autistic children are severely impaired in intellectual, social and emotional functioning, and require extensive care throughout their life span.

[161] Clough (Litigation guardian of) v. Ontario, [2003] O.J. No. 1074 (OntSupCtJus.), and Lowrey (Litigation guardian of) v. Ontario, [2003] O.J. No. 2009 (OntSupCtJus).

[162] *R. v. Wolfe*, [1995] S.J. No. 502 (SKCA).

[163] *R. v. Drybones* (1969), 9 D.L.R. (3d.) 473 (S.C.C.).

[164] *Supra* note 162. Alcohol has been illegally used as an inducement to entrap Indians into selling wild meat to undercover agents in wildlife sting operations on reserve land, as in *R. v. Wolfe*, *Supra* note 162. Charges were stayed against the Indian hunters in *Wolfe* due to the violation of the treaty alcohol ban.

The essence of the "dignity" aspect of s. 15 is the marginalization and exclusion from society disabled people suffer, absent adequate treatment through accommodation of their disabilities and differences.[165] Without accommodation that could attenuate their secondary characteristics, FASD individuals may well be subject, not only to rejection and institutionalization, but also to the harsh consequences of incarceration, the most extreme form of exclusion and stigmatization. Because of the organic brain impairment such individuals suffer due to the prenatal teratogenic effects of alcohol, they are unable to appreciate fully the consequences of their actions. They may impulsively repeat inappropriate actions, becoming subject to escalating carceral dispositions.

5.3 CROWN JUSTIFICATION UNDER SECTION 1 OF THE *Charter*

Governments may attempt to justify infringing *Charter* rights, according to the provisions of section 1 of the *Charter*:

> *The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Thus, once a *Charter* right to treatment is established by FASD claimants, it is subject to limitation by the Crown under section 1. The crux of this limitation for disability cases, like *Auton (supra* note 15) and *Eldridge (supra* note 165), and by implication, FASD claimants, focuses on whether or not the denial of treatment constitutes only a minimum impairment of the right. Minimum impairment means that the government has made reasonable accommodation to the point of "undue hardship." Pursuant to *Law*, undue hardship and the "dignity" analysis may overlap in the sense that any accommodation short of ameliorating the marginalization and exclusion of FASDs would not be justified under either analysis. .

An additional factor militating against Crown justification under section 1 is the commitment made by Canada to the United Nations *Convention on the Rights of the Child*[166] (CRC). Articles 23, 24 and 40(3) & (4) of CRC uphold the right of all children to the highest standard of health care, extending that right with particular attention to the needs of mentally or physically disabled children. Such needs would include rehabilitative treatment to promote both self-reliance and full participation in the community, and assured access to education, training, health care services, rehabilitation services, recreation, and preparation for employment. Needs of child offenders are also to be considered. These would include access to the same services as other children, and, as a priority, access to dispositions other than institutionalization.

The Court may require cost-benefit analyses data and empirical measures of efficacy of treatment, in order to justify curial intrusion into the executive aspect of government. In mandating that governments provide funding for treatment, courts first must be certain that a serious *Charter* breach has occurred, and that such a breach cannot be justified by reasonable limits. Although no scientifically proven method of treating FASDs exists, ameliorative practices are recommended by experts in the field.[167] Cost-benefit analyses indicate the folly of persisting with the status quo; costs of ameliorative treatment are more than offset by the savings of not having to pay for lifelong care and institutionalization or incarceration of FASDs. The case for mandating voluntary treatment of FASDs is compelling, given the Crown's noted complicity in the sale and regulation of alcohol, its breach of the duty to warn effectively of the dangers of alcoholic products through warning labels on the products, and its breach of the constitutionally protected treaty alcohol ban, now part of the supreme law of Canada.[168]

---

[165] *Eldridge v. British Columbia*, [1997] 3 S.C.R. 624.

[166] G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), ratified in Canada in 1992.

[167] *Supra* note 96. Roberts, G. and Nanson, J. *Best Practices: Fetal Alcohol Syndrome/Fetal Alcohol Effects and the Effects of Other Substance Use During Pregnancy* (Ottawa: Health Canada, 2000).

[168] S. 52, *Constitution Act*, 1982: The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

5.4 JURISDICTION OVER HEALTH CARE

Jurisdiction over health care is tripartite in nature, possessing a federal, provincial, and Aboriginal component:

> Health is not a single matter assigned by the Constitution exclusively to one level of government. Like inflation and the environment, health is an "amorphous topic" which is distributed to the federal Parliament or the provincial legislatures depending on the purpose and effect.of the particular health measure in issue. . . . The federal Parliament has used its spending power to impose national standards for hospital insurance and medical care programmes as a condition of federal contributions to these provincial programmes.[169]

Under the *Constitution Act, 1867,*[170] the province has authority under s. 92(16), local and private matters (public health); s. 92(13), property and civil rights (food and drugs, and professional regulation); and s. 92(7), authority over hospitals. Aboriginal peoples assert authority pursuant to s. 35 of the *Constitution Act, 1982,* under the aegis of such protected rights as self-determination, and the medicine chest provision of Treaty 6. Jurisdiction over Indians and Lands for Indians was conferred solely upon the Federal Government, under s. 91(24) of the *Constitution Act, 1867,* but may be devolved to the province, or to bands or treaty areas.

A case in point is the 1994 tripartite agreement that the Treaty 4 area entered to build and maintain a hospital at Fort Qu'Appelle, Saskatchewan. The tripartite agreement is among the federal government, provincial government, and the File Hills Qu'Appelle Tribal Council. Unlike other hospitals or health centres in the province, the Fort Qu'Appelle Indian Hospital is not owned by the provincial government, but pursuant to the tripartite agreement, is owned by a holding company that reports to the File Hills Qu'Appelle Tribal Council. A ten million dollar fund from the federal government was used for capital outlays, while the province, through the District Health Board, contributes to operating costs. The hospital models a holistic approach to wellness, attempting to provide an array of both institutional and community-based programs and services, including: counseling, traditional medicine, traditional diet counseling, liaison services, and respite. Both First Nations, and non-Aboriginal representatives from neighbouring communities are members of the Fort Qu'Appelle Indian Hospital Board Inc., established by the Tribal Council to manage the facility.[171]

Current FASD and ASD cases can be distinguished from *R. v. Turpin* (1989),[172] *R. v. S. (S.)* (1990),[173] and *Haig v. Canada* (1993)[174] in that these earlier cases mounted s. 15 Charter challenges on the basis of differential treatment due to province or place of residence. FASD and ASD claimants do not; their claims rest on s. 15(1) of the *Charter* as well, but are based on the enumerated ground of discrimination due to disability, not on the analogous ground of place of residence. Under a federal system, however, place of residence raises some considerations, even if place of residence is not the basis of the *Charter* claim. Matters coming solely under provincial jurisdiction according to s. 92 of the *Constitution Act, 1867,* may vary from province to province, as was the intent of the constitutional division of powers:

> There can be no question, then, that unequal treatment which stems solely from the exercise, by provincial legislators, of their legitimate jurisdictional powers cannot be the subject of a s. 15(1) challenge on the basis only that it creates distinctions based on province of residence.[175]

---

[169] Hogg, P.W. (2003). *Constitutional Law of Canada.* Toronto: Thomson Carswell, at s. 18.4.

[170] (U.K.), 30 & 31 Vict., c. 3.

[171] Fort Qu'Appelle Indian Hospital transferred to First Nations control. Retrieved January 17, 2004, from the World Wide Web: http://www.hc-sc.gc.ca/english/media/releases/1995/95_80e.htm, and Report raises questions about hospital, Saskatchewan Sage Newspaper. Retrieved January 17, 2004, from the World Wide Web: [1989] 1 S.C.R. 1296.

[172] *R. v. Turpin,* [1989] 1 S.C.R. 1296.

[173] *R. v. S.(S.),* [1990] 2 S.C.R. 254.

[174] *R. v. Haig,* [1993] 2 S.C.R. 995.

[175] *R. v. S.(S.),* [1990] 2 S.C.R. 254, 288, per Dickson, C.J., cited in Hogg at 52.16.

In addition, federal laws need not apply uniformly across the country; rather "province-based" distinctions in *federal* laws can be a legitimate means of promoting the values of a federal system."[176] For these reasons, disabled claimants may elect to name as respondents all three levels of government: the federal, the provincial, and the Aboriginal. If claimants are Aboriginal, all three levels may be named; federal and provincial levels may be named if the claimants are non-Aboriginal. Claimants should be prepared for differences in health care provisions from province to province, differences that may not offend the *Charter*. Therefore, litigation may differ from province to province, based on either the constitutional jurisdiction over its health care of each province, or on province-based distinctions in application of federal laws.[177]

5.5 SECTION 7 OF THE *Charter*: RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON

Judge Turpel-Lafond is a First Nations' woman who advocates for marginalized Aboriginal and non-Aboriginal young persons, particularly young persons with disabilities such as FASDs. Not satisfied with the status quo, she pushes the law to evolve in reponse to the needs of the most vulnerable in our society. As a result of a young person with FAS being held Unfit to Stand Trial in R. v. D.B., [2000] SKPC 155, her Court is examining the potential of s. 7 *Charter* litigation for individuals affected by FASDs, in particular those found Unfit to Stand Trial (UST) and dispositions or sentences to which they are subject, or may, due to s. 7, become subject, including absolute discharge.[178] Section 7 of the *Charter* states:

> 7. Everyone has a right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The young person with FASD in *D.B.* was found UST under s. 2 of the *Criminal Code*.[179] This finding may be subject to appeal, as, at trial, contradictory expert witness testimony was presented as to fitness. The defense, informed by disposition problems previously encountered by USTs under s. 672.54 of the *Criminal Code*, filed a s. 7 *Charter* challenge, to ensure that, were the finding of UST upheld for D.B., rights to life, liberty and security of person would not be breached by a disposition which was not "the least restrictive and punitive," considering therapeutic requirements for alleviating his mental disability. If not considered a significant threat to public safety, D.B., like those with mental disorders found Not Criminally Responsible (NCR) under s. 16(1) of the *Criminal Code*, should be subject to absolute discharge, albeit this option is not permitted in the Code for USTs. Whether resultant automatic, indeterminate detention for USTs like D.B., who due to their permanent disabilities can never become fit, and who are not considered a threat to public safety, is contrary to s. 7 of the *Charter* will be considered in *R.* v. *D.B.* at the local level, and in *R.* v. *Demers*, [2003] S.C.J. No. 58.

However, whatever the disposition, D.B. will require lifelong supports. If not subject to an absolute discharge by means of a *Charter* challenge, he will remain under the jurisdiction of the criminal justice system for the remainder of his life, as his condition is permanent. D.B. is not in the position of someone suffering from a disability like psychosis that medication can alleviate, and who might regain fitness and be able to stand trial, be acquitted, or found NCR and subject to absolute discharge.

Disposition is also an issue for accused with mental disorders who are considered a threat to public safety. The "least onerous and least restrictive disposition," which takes into consideration the need to protect the public, the mental condition of the accused, and the reintegration of the accused into society is to be the order of the day (s. 672.54 of the *Criminal Code*). Dispositions include conditional discharge or a secure hospital disposition (*Ibid*. at ss. (b) and (c)). However, absent therapeutic facilities in the community or in secure hospital

[176] *Supra* note 169 at 52.16, quoting Dickson C.J. in R. v. S.(S.). Ibid. at 289 (Hogg).

[177] *Ibid.*

[178] *R.* v. *T.L.* [1999] Y.J. No. 57 (Terr. Ct.); and R. v. D.B. [2003] SKPC 155.

[179] R.S.C., 1985.

placements, offenders have languished in administrative segregation in correctional facilities.[180] It was never an intention of the legislation to see such mentally disordered individuals warehoused in penal institutions for extended periods of time. Yet such individuals are at risk of being forgotten, lost indefinitely, and left virtually untreated, in the great maw of the justice system's penal apparatus.

---

[180] *D.I. v. Yukon Review Board*, [2000] Y.J. No. 80.

6. CONCLUSION

The present writer's goal as researcher, teacher, lawyer, or volunteer advocate, is to attempt to address gaps in the research and in the law, with the purpose of more fully meeting the needs of mentally disordered individuals, particularly those with FASDs. Conflation of contextual, extrinsic, and interdisciplinary aspects of law, medicine, and social sciences will no doubt expedite the achievement of this goal. Empirically-based, qualitative research, employed in the pursuit of equity under the *Charter*, may have a synergistic, transformative effect on society. The result may be a society where inclusion and equity for all become benchmarks. Utopian as it may sound, such transformation is an ideal worthy of dedicated effort. Ultimately, change will require that privilege be transformed into altruism. Foucault's critical gaze does seem to be slowly shifting from marginalized victims, such as FASDs, to the privileged. One wonders how it became otherwise directed. It is truly normal and natural that the gaze should scrutinize the privileged. May it focus there, ever vigilant, until inclusiveness and equity are achieved for all.

Following are specific recommendations to achieve the overall goals expressed for those with FASDS:

- community-based treatment, inclusive of the family, including development and implementation of multi-disciplinary treatment;
- specialized supports throughout the lifespan: early intervention and pre-school, education (one to one), training and employment, job coaches, residential, money management and basic life skills, substance abuse treatment, mental health therapy, social skills and positive role models, and dealing with the justice system and other governmental agencies;
- therapeutic courts;
- alcohol product warning labels;
- effective, culturally appropriate prevention strategies;
- women-centered addiction programs, and supports for women and families;
- more FASD diagnostic services;
- in-home supports for families, rather than foster care;
- screening services at hospitals, medical clinics, pre-schools, elementary schools, courts, and custodial and correctional facilities;
- funding for support services not linked to IQ, but rather to scales of adaptability such as the Vineland Adaptive Behavior Scales and the Scales of Independent Behavior—Revised;
- improvement in statistics and coding systems that will include specific enumeration of FASD and its constituent disorders, their incidence and prevalence, so that resources can be allocated to accommodate effectively the needs of those affected; and
- further research into prevention and treatment.

REFERENCES

CASE LAW

Auton (Guardian ad litem of) v. *British Columbia (Minister of Health)*, [1999] B.C.J. No: 718 (BCSC).

Auton (Guardian ad litem of) v. *British Columbia (Minister of Health)*, [2000] BCSC 1142.

Auton (Guardian ad litem of) v. *British Columbia (Minister of Health)*, [2001] BCSC 220.

Auton (Guardian ad litem of) v. *British Columbia (Attorney General)*, [2002] BCCA 538.

Clough (Litigation guard of) v. *Ontario*, [2003] O.J. No. 1074 (OntSupCtJus).

D. J. v. *Yukon (Review Board)* [2000] Y. J. No. 80.

Eldridge v. *British Columbia* (Attorney General), [1997] 3 S.C.R. 624.

Law v. *Canada*, [1999] 1 S.C.R. 497.

Lowrey (Litigation guardian of) v. *Ontario*, [2003] O.J. No. 2009 (OntSupCtJus).

Muir v. *Alberta*, [1996] A.J. No. 37.

R. v. *Demers* [2003], *S.C.J. No. 58*

R. v. *Drybones (1969), 9 D.L.R.* (3d.) 473 (S.C.C.).

R. v. *Gladue*, [1999] 1 S.C.R. 688.

R. v. *Gray*, 2002 B.C.J. No. 428 (B.C. Prov. Ct.)

R. v. *Haig*, [1993] 2 S.C.R. 995.

R. v. *J.A.P.*, [2000] S.J. No. 260 (Sask. Prov. Ct.).

R. v. *L.E.K*, [2000] SKCA 48.

R. v. *L.E.K*. [2001] S.J. No. 434 (Sask. Youth Ct.)

R. v. *M.(B.)*, [2003] SKPC 83.

R. v. *M.(B.)#2*, [2003] SKPC 133.

R. v. *M.L.*, [2000] S.J. No. 17 (Prov. Ct.).

R. v. *Proulx*, [2000] 1 S.C.R. 61.

R. v. *R.F.*, [2002] S.J. No. 742 (Sask. Prov. Ct.)

R. v. *Turpin*, [1989] 1 S.C.R. 1296.

R. v. *S.L.P.*, [2002] S.J. No. 311 (Sask. Prov. Ct.).

R. v. *S.(M.)* (2003), 173 C.C.C. (3d) 526 (SKCA).

R. v. *S.(S.)*, [1990] 2 S.C.R. 227.

R. v. *Steeves*, [1998] B.C.J. no. 3135 (B.C. Prov. Ct.).

R. v. *T.J.*, [1999] Y.J. No. 57 (Terr. Ct.).

R. v. *Turpin,* [1989] 1 S.C.R. 1296.

R. v. *W.A.L.D.*(1), [2002] S.J. No. 221 (Prov. Ct.).

R. v. *W.A.L.D.*(2), [2002] S.J. No. 222 (Prov. Ct.).

R. v. *Wolfe,* [1995] S.J. No. 502 (SKCA).

United States v. *Lee,* 1998 U.S.App. LEXIS 5967, No. 97-2830, United States Court of Appeals of the Eighth Circuit.

Winnipeg Child and Family Services (Northwest Area v. *D.F.G.* (1997), 152 D.L.R. (4th) 193 (S.C.C.).

INTERNATIONAL CONVENTION

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49(at 167, U.N. Doc. A/44/49 (1989), ratified by Canada in 1992.

STATUTES

Act further to amend "The Indian Act, 1880," S.C. 1884, c. 27 (47 Vict.).

The Alcohol Beverage Labelling Act, PL 100-690, U.S.

Alcohol and Gaming Regulation Act, S.S., 1988-89, Chapter A-18.01.

Bill C-222, *An Act to Amend the Food and Drug Act,* April 25, 1996, never proclaimed.

Canada Elections Act, S.C., 1960, c. 39, s. 14 (8-9 Eliz. II).

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act,* 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11.

Child and Family Services Act, S.S. C-72, 1989-90.

Constitution Act, 1867, (U.K.), 30 & 31 Vict., c. 3.

Constitution Act, 1982, being Schedule B to the *Canada Act* 1982 (U.K.) 1982, c.11.

Criminal Code, R.S.C., 1985.

Fetal Alcohol Syndrome Awareness Day, C. F-13.101, S.S. 2002.

Indian Act, S.C., 1876, c. 18.

Indian Act, R.S.C. 1906, c. 81, s. 149A [en. S.C. 1926-27, c.32, s. 6].

Indian Act, R.S.C. 1927, c. 98.

Indian Act, S.C., 1951, c. 29.

Indian Act, R.S.C., 1952, c. 23.

Indian Act, R.S.C., 1970, c. I-6.

Indian Act, R.S., 1985, c. I-5.

Indian Act, R.S.C., 1985, c. I-5, s. 6(1)(c) [en. R.S.C., 1985, c. 32 (lst Supp.) s. 4].

Liquor Licence Act, R. S.O. 1990, c. L-19, s. 38(1)

Sexual Sterilization Act, R.S.A., 1928.

Youth Criminal Justice Act, S.C.2002, c. 1 (royal assent February 19, 2002, came into force April 1, 2003).

Young Offenders Act, R.S.C., 1985, c. Y-1.

SECONDARY SOURCES

Books

Adams, M., *Our Son, A Stranger: Adoption Breakdown and Its Effects on Parents* (Montreal: McGill-Queens University Press, 2002).

Alcohol and Gaming Commission of Ontario, *Liquor Advertising Guidelines: Liquor Sales Licensees and Manufacturers* (Toronto: Alcohol and Gaming Commission of Ontario: August, 2003).

Amato, P. & Booth, A. *Generation at Risk: Growing up in an Era of Family Upheaval* (Cambridge, Mass.: Harvard University Press, 1997).

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Volume IV*, (Washington, D.C.: American Psychiatric Association, 1994).

Barber, K. (Ed.) *The Canadian Oxford Dictionary* (Oxford: University Press, 2001).

Beal, B. and Macleod, R. *Prairie Fire, The 1885 North-West Rebellion* (Toronto: McClelland & Stewart, 1994.)

Boland, F.J., Burrill, R., Duwyn, M. and Karp, J., *Fetal Alcohol Syndrome: Implications for Correctional Services*, (Ottawa: Correctional Services Canada, 1998).

Bruininks, R. H.; Woodcock, R.; Weatherman, R., and Hill, B. *Scales of Independent Behavior Revised* (Scarborough, ON: Nelson Thomson Learning, 1996).

Canada, *Report on the Royal Commission on Aboriginal Peoples: Bridging the Cultural Divide* (Ottawa: Supply and Services Canada, 1996).

Canada, *Report on the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, **vol. 1**.

Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, **vol. 4** (Ottawa: Supply and Services Canada, 1996).

Conry, J. and Fast D.K. *Fetal Alcohol Syndrome and the Criminal Justice System* (Vancouver: Law Foundation of British Columbia, 2000).

Food and Drug Administration, *Surgeon General's Advisory on Alcohol and Pregnancy* (FDA:Washington, 1981) Drug Bull. 11.9-10.

Foucault, M. *The Birth of the Clinic: An Archaeology of Medical Perception*. (New York: Vintage, 1975), cited in Lupton, D. "The Social Construction of Medicine and the Body," in C. Bird (Ed.), *The Handbook of Medical Sociology* (New Jersey: Prentice Hall, 2000), 50-63.

Gibson, F., *Home is My Road,* (Toronto: Playwrights Canada Press, 2003).

Hamilton, A. C. and Sinclair, C.M., for the Province of Manitoba, *Volume 1: Report of the Aboriginal Justice Inquiry of Manitoba.* (Altona, Alta.: D. W. Friesen & Sons Ltd., 1991).

Hogg, P., *Constitutional Law of Canada*, Student Edition (Carswell: Scarborough, Ontario, 2003).

Roberts, G. and Nanson J., Best Practices: *Fetal Alcohol Syndrome/Fetal Alcohol Effects and the Effects of Other Substance Use During Pregnancy.* (Ottawa: Health Canada, 2000).

Saskatchewan Institute on Prevention of Handicaps (SIPH), *Saskatchewan Institute on Prevention of Handicaps Resource Catalogue* (Saskatoon, Saskatchewan: SIPH, 2002-2003) at 21. Description of video, *ARND: A School Wide Approach, David Livingstone Community School, 2001.*

Saskatchewan Liquor and Gaming Authority 2002-2003 Annual Report.

Smith, D. W. *Recognizable Patterns of Human Malformation: Genetic, Embryologic and Clinical Aspects* (3rd ed.) (Philadelphia: W.B. Saunders, 1982).

Sontag, S. *Illness as Metaphor/Aids and its Metaphors* (New York: Anchor, 1989).

Sparrow, S.; Balla, D.; & Cichetti, D. *Vineland Adaptive Behavior Scales* (VABS) (American Guidance Services: Circle Pines: MN, 1984).

Stratton, K.R., Howe, C.J. Battagalia, F.C., Institute of Medicine. *Fetal Alcohol Syndrome — Diagnosis, Epidemiology, Prevention, and Treatment.* (Washington, D.C.: National Academy Press, 1996).

Streissguth, A. P., LaDue, R.A., Randels, S.P. *A Manuary on Adolescents and Adults with Fetal Alcohol Syndrome with Special Reference to American Indians.* (Seattle, WA: University of Washington, Department of Psychiatry and Behavioral Sciences, the Child Development-Mental Retardation Center, and the Alcoholism and Drug Abuse Institute, 1988).

Streissguth, A.P. *Fetal Alcohol Syndrome, A Guide for Families and Communities,* (Toronto: Paul Brookes Publishing Co., 2001).

Streissguth, A. P., Barr, H.M., Kogan, J. and Bookstein, F.L., *Understanding the Occurrence of Secondary Disabilities in Clients with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE).* (Seattle: University of Washington School of Medicine, Fetal Alcohol and Drug Unit, 1996). [unpublished]

Tait, C., *Fetal Alcohol Syndrome among Canadian Aboriginal Peoples: Review and Analysis of the Intergenerational Links to Residential Schools* (Ottawa: Aboriginal Healing Foundation, 2002) [unpublished].

Tait C. *A Study of the Service Needs of Pregnant Addicted Women in Manitoba* (Winnipeg, MB: Prairie Women's Health Centre of Excellence, 2000).

ARTICLES

Armstrong, E. M. "Diagnosing Moral Disorder: The Discovery and Evolution of Fetal Alcohol Syndrome" (1998) 47(12) Soc. Sci. Med. 2025-2042.

Astley, S. J. & Clarren, S.K., "Diagnosing the Full Spectrum of Fetal Alcohol-Exposed Individuals — Introducing the 4-digit code," (2000) 35(4) Alcohol and Alcoholism, 400-410, Washington State Fetal Alcohol Syndrome Diagnostic and Prevention Network (DPN), http://alcalc.oupjournals.org/cgti/content/full/35/4/400.

Burd, L., Selfridge, R, Klug, M.G. & Juelson, T. "Fetal Alcohol Syndrome in the Canadian Corrections System, JFAS Int., e 14, The Hospital for Sick Children.

Chandler, M. J. & Lalonde, C.E. "Cultural Continuity as Hedge Against Suicide in Canada's First Nations" (1998) 35(2) Transcultural Psychiatry, 193-211.

Chandler, M. J., Lalonde, C.E., & Sokol, B. "Continuities in Selfhood in the Face of Radical Development and Cultural Change," in L. Ncci, G. Saxe, E. Turiel (Eds.), *Culture, Thought and Development*, pp. 65-94 (Mahwah: NJ: Lawrence Erlbaum Associates, 2000).

Clarren, S.K. and Smith, D. W. "The Fetal Alcohol Syndrome," (1978) 298(19) New England Journal of Medicine, 1073-1067.

Driver, D. "Saskatchewan judges lead fight for handling of FASD victims" (July 11, 2003) 23(11) *The Lawyers Weekly*.

Fast, D.K., Conry, J. L., and Loock, C.A., "Identifying Fetal Alcohol Syndrome (FAS) among Youth in the Criminal Justice System," (1990) 20(5) Journal of Developmental and Behavioral Pediatrics, 370-372.

Greschner, D. and Lewis, S., "Medicare in the Courts: *Auton* and Evidence-Based Decision-Making," Canadian Bar Review, publication pending.

Habbick, B. F. "Fetal Alcohol Syndrome In Saskatchewan: Unchanged Incidence in a 20-year period" (1996) 87 Can J. Public Health 204.

Hankin, J.R.,"Fetal Alcohol Syndrome Prevention Research," The Journal of the National Institute of Alcohol Abuse and Alcoholism, 2002, 26(1), 58-65.

Hansen, J.W., Streissguth, A.P., and Smith, D.W., "The Effects of Moderate Alcohol Consumption During Pregnancy on Fetal Growth and Morphogenisis," (1978) 92(3) Journal of Pediatrics, 457-460.

Huffine, C., "It is time Psychiatry's Diagnostic 'Bible' Addresses FAS," (2000) 10(2) Iceberg.

Johnson, B.F. "Stolen Wombs: Indigenous Women Most at Risk." (2000) Native Americas, 38-42.

Jones, D.L., Smith, D.W., Ulleland, C.N. , Streissguth, A.P. "Pattern of malformation in offspring of chronic alcoholic mothers," (1973) Lancet, 2:1267-1271.

Jones, K. L., Smith, D.W. "Recognition of the fetal alcohol syndrome in early infancy," (1973) Lancet, 2:999-1001.

Jones, K.L., Smith, D.W., Streissguth, A.P. Myrianthopoulos, N.C. "Outcome in Offspring of Chronic Alcoholic Women," 1974 Lancet, 1:1076-1078.

Koren, G., Nulman, I., Chudley, A.E., & Loocke, C. "Fetal Alcohol Spectrum Disorder," Nov. 25, 2003 Canadian Medical Association Journal, 169(11): 1181-1185.

Lemoine, P. Harouseau, H., Borteryu, J. & Menuet, J. "Les Enfants des Parents Alcooliques: Anomalies Observee Apropros de 127 cas. Ouest Medical, 1968: 21: 476-482.

Philp, M. "Middle-class FAS: A Silent Epidemic?" Saturday, February 1, 2003, Globe and Mail, page F6.

Raymond, M. and Belanger, J. "Literarcy-Based Supports for Young Adults with FAS/FAE," Prepared for the Province of British Columbia, Ministry of Advanced Education, Training and Technology, and Human Resources Development Canada, The National Literacy Secretariat. Retrieved Oct. 2, 2002, from the World Wide Web: http://www.nald.ca/fulltext/lbsupport/Doc/pdfDirectionsPersonal PlanningTool.

Robinson, G.C., Conry, J.L., Conry, R.F., "Clinical Profile and Prevalent of Fetal Alcohol Syndrome in an Isolated Community in British Columbia," Canadian Medical Association Journal, Vol. 137, 203-7.

Sampson, P.D., Streissguth, A.P., Bookstein, F.L., Little, R.E., Clarren, S.K., Dehaene P., Hanson, J.W., & Graham, J. M. "Incidence of Fetal Alcohol Syndrom and Prevalence of Alcohol-Related Neurodevelopmental Disorder, (1997) 56 Teratology 317-326.

Smith, D. W., "Fetal Alcohol Syndrome and Fetal Alcohol Effects," (1981) 3 Neurobehavioral Toxicology and Teratology, 127.

Square, D., "Fetal Alcohol Syndrome Epidemic in Manitoba Reserves" (1997) 157 *Canadian Medical Association Journal 59-60.*

Standing Committee on Health & Welfare, Social Affairs, Seniors & the Status of Women, "Foetal Alcohol Syndrome," 3rd Session, 34th Parliament, No.s. 10-22, 1992-1993 Index, 1-29.

Streissguth, A.P., Asae, J.M., Clarren, S.P., LaDue, R.A. and Smith, D.F., "Fetal Alcohol Syndrome in Adolescents and Adults." (1991) 165 JAMA, 1961-1967.

Streissguth, A., and O'Malley, K., "Neuropsychiatric Implications and Long-term Consequences of Fetal Alcohol Spectrum Disorders." (2000) 5(3) Seminars in Clinical Neuropsychiatry, 177-190.

Zakreski, D., "Fetal Alcohol Syndrome Linked to Crime," March 10, 1998 Star Phoenix.

UNPUBLISHED THESES

Ferguson, L.G. (1997). *Deconstructing Fetal Alcohol Syndrome: A Critical Inquiry into the Discourse around Alcohol, Women, Ethnicity, Aboriginals and Disease*, Unpublished Master's Thesis, Carle University (Canada).

Mason, R. (2000). *The Healing of Aboriginal Offenders: A Comparison Between Cognitive-Behavioral Treatment and the Traditional Sweat Lodge Ceremony*, Unpublished Masters' Thesis, University of Saskatchewan, Saskatoon, Saskatchewan.

Mitten, R. (2003) *Barriers to Implementing Holistic, Community-Based Treatment for Offenders with Fetal Alcohol Conditions.* Unpublished LL.M. Thesis, University of Saskatchewan, Saskatoon, Saskatchewan.

PAMPHLETS

Restorative Circles Initiative, sponsored by Department of Justice Canada-Youth Justice, with support of the Saskatoon King George Community & School Association. Restorative Circles Initiative, 206-119 4th Avenue South, Saskatoon, SK S7K 5X2.

WEB-SITES

CBC News, November 4, 2002, *Forced Sterilization of the Indigenous Women of Brazil*, retrieved November 5, 2002, from the World Wide Web: http://www.CBC.ca.

CBC Radio, *The Current*, "Immigrant Adoptions," Host Anna Maria Tremonti, retrieved January 24, 2003, from the World Wide Web: http://cbc.ca/thecurrent/logs.html.

Canada Centre for Justice Statistics, Aboriginal Peoples in Canada, retrieved July 20, 2003, from the World Wide Web: http://www.statcan.ca/english/freepub/85F0033MIE/85F0033MIE01001.pdf.

Canada Northwest FASD Partnership. Retrieved January 28, 2004, from the World Wide Web: http://www.faspartnership.ca/aboutus/page.cfm?pg=index.

Children and Youth in Care Review: Listen to Their Voices, Final Report, April, 2000, Saskatchewan Children's Advocate Office, retrieved January 22, 2004, from the World Wide Web: http://www.saskcao.ca/adult/media/Report2000/Report.pdf.

Correctional Service Canada, Aboriginal Offenders, retrieved August 11, 2003, from the World Wide Web: http://www.csc-scc.gc.ca/text/pubed/feuilles/off-abe.shtml.

Correctional Service Canada, *Task Force Report on the Reduction of Substance Abuse* (1990), retrieved from the World Wide Web, September 10, 2003, http://www.csc-scc.gc.ca/text/pblct/forum/e024/e024i_e.shtml.

External Brain, Teresa Kellerman, 2003, retrieved September 12, 2003 from the World Wide Web: http://come-over.to/FAS/externalbrain.htm.

The Fetal Alcohol Crisis, McLean, C., 2000. Retrieved January 19, 2004, from the World Wide Web: http://www.come-over.to/FAS/crisis.

Fetal Alcohol Syndrome and Alcohol Policy, Policy Framework, Warning Labels Bills/Motion, Apolnet (Alcohol Policy Network), retrieved February 14, 2003, from the World Wide Web: http://www.apolnet.org/actpacks/pf_fas.html.

The Five Million Dollar Baby, Kellerman, C., 2000, retrieved January 19, 2004 from the World Wide Web: http://www.acbr.com/fas.

Fort Qu'Appelle Indian Hospital transferred to First Nations control, Retrieved January 17, 2004, from the World Wide Web: http://www.hc-sc.gc.ca/english/media/releases/1995/ 80e.htm. Health Canada and Canadian Pediatric Society, Joint Statement: Prevention of Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) in Canada, October 16, 1996, retrieved January 21, 2004, from the World Wide Web: http://www.hc-sc.gc/english/media/releases/1996/96-72e.htm.

General Assembly of the United Nations, 85th Plenary Meeting, 20 December 1993, "Need to adopt efficient, international measures for the prevention of sale of children, child prostitution and child pornography," A/RES/48/156. Retrieved January 27, 2004, from the World Wide Web: http://www.un.or/documents/ga/rews/48/a48r156.htm.

Health Canada, A Statistical Profile on the Health of First Nations in Canada (Ottawa, Canada: 2003), retrieved January 30, 2003, from the World Wide Web: http://www.hc sc.gc.ca/fnihb/sppa/hia/publications/statistical_profile.htm.

Institute of Aboriginal Peoples' Health, retrieved August 2, 2003, from the World Wide Web: http://www.cihr-irsc.gc.ca/institutes/iaph/publications/strat plan 2002.

The International Statistical Classification of Diseases and Related Health Problems (ICD), World Health Organization. Retrieved January 19, 2004, from the World Wide Web: http://www.who.int/whosis/icd10/.

KidsFirst web-site. Retrieved January 7, 2004, from the World Wide Web: http://www.sasked.gov.sk.ca/echild/ecd_annual_report_2001-2 pdf.

Literacy-Based Supports for Young Adults with FAS/FAE. (132 p.), Ramond, M. & Belanger, J. British Columbia: Joint Project of the National Literacy Secretariat, Human Resources Canada, Minister of Advanced Education, Province of British Columbia. Retrieved October 2, 2002, from the World Wide Web: http://www.nald.ca/fulltex/lbsupport/Doc/pdf.

Motherisk, retrieved October 16, 2003, from the World Wide Web: http://www.motherisk.org.

NWT Alcohol and Drug Survey, 1996, NWT Bureau of Statistics, retrieved February 10, 2003, from the World Wide Web: http://www.stats.gov.nt.ca/SWtatinfo/Health/alcdrug/report.html.

Parliamentary Committee, Thursday April 18, 1996: Food & Drugs (2). Retrieved January 22, 2004, from the World Wide Web: http://www.parl.gc.ca/committees352/sfda/evidence/02_96-04-18/sfda02_blk101.html.

Post Taliban Warlords Oppress Afghan Women, Leopold, E. (December 17, 2002) Reuters News Agency, Human Rights Watch Report. Retrieved January 5, 2003, from the World Wide Web: http://news.findlaw.com/international/s/20021217/afghanwomendc.html.

Prairie Women's Health Centre of Excellence, retrieved February 3, 2003, from the World Wide Web: http://www.pwhce.ca/epaw.htm..

Report of the Committee of Inquiry in the Case Involving Dr. Nancy Olivieri, the Hospital for Sick Children, and the University of Toronto, and Apotex, Inc.: Retrieved September 20, 2003, from the World Wide Web: http://www.caut.ca/english/issues/acadfreedom/Olivieri%20Inquiry%20Report.pdf.

School of Hope: Teaching Kids with Fetal Alcohol Syndrome. Retrieved from the World Wide Web, September 12, 2003: http://www.come-over.to/FAS/schoolofhope.htm.

Saskatchewan Children's Advocate Annual Report, April 2003. Retrieved January 22, 2004, from the World Wide Web: http://www.saskcao.ca/adult/media/AnnualReport2002/legassem_cov.pdf.

Report raises questions about hospital, Saskatchewan Sage Newspaper. Retrieved January 17, 2004, from the World Wide Web: http://www.ammsa.com/sage/topnews-Mary-2001.html.

Third Annual Fetal Alcohol Canadian Expertise (FACE) Research Roundtable (September 9, 2002), *FAS: When the Children Grow Up*. Retrieved September 30, 2002, from the World Wide Web: http://www.knowtv.com.

Yukon Liquor Corporation, Social Responsibility, retrieved January 29, 2004, from the World Wide Web: http://www.ylc.sk.ca.socialrespon.htm.

E-MAIL MESSAGES:

CBA Funding of Motherisk. susan.santiago@sickkids.ca, September 15, 2003, e-mail from Susan Santiago, Motherisk, Hospital for Sick Children, Toronto, 11:55 a.m.

Court Services, e-mail communications, January 12, 2004 from: Christa Klatt cklatt@justice.gov.sk.ca, and Linda Bogard lbogard@justice.gov.sk.ca.

Dr. P. Blakley, Alvin Buckwold Clinic, Children's Kinsmen Centre, Saskatoon, SK, e-mail communication of January 18 and 19, 2004, patricia.blakley@saskatoonhealthregion.ca.

FAS Registry Numbers. Patricia.Living@gov.yk.ca, e-mail from Patricia Living, Yukon Government, February 3, 2004.

Heath Information Analyst, Regina Qu'Appelle Heath Region, e-mail communication of January 22, 2004, with LeeAnn Carr, LeeAnn.Carr@rqhealth.ca.

Interdepartmental Committee on FASD, Chair, Pat Inglis from Department of Health, e-mail communication of January 19, 2004, pinglis@health.gov.sk.ca.

Saskatchewan KidsFirst Program, Early Childhood Development Branch, Sask. Learning, e-mail communication with Elaine Clark, EClark@sasked.gov.sk.ca.

STOP FAS Maternal Intervention Program in Manitoba. DRidd@gov.mb.ca, October 1, 2002 email from Dawn Ridd, Child Health and FAS Consultant, Child Health Unit, Manitoba Health, 2097-300 Carlton Street, Winnipeg, Manitoba.

Teaching Units on FAS. lbraun@frontiersd.mb.ca, September 30, 2002 e-mail from Lisa Braun, Frontier School Division, Library Services, 1402 Notre Dame Ave., Winnipeg, Manitoba.

TELEPHONE COMMUNICATIONS:

Telephone Communication with Dr. Patricia Blakley, Alvin Buckwold Clinic, Children's Kinsmen Centre, Saskatoon, SK, January 19, 2004.

Telephone Communication with LeeAnn Carr, Regina Health Regina, January 19, 2004.

Telephone Communication with Elaine Clark, Early Childhood Development Branch, Sask. Learning, January 7, 2004.

Telephone communication with Wanda Lyons, member of Interdepartmental Planning Committee, Sask. Learning, January 7, 2004.

FACSIMILE:

Health Information Management Services, Sharon McMillan, Analyst, Royal University Hospital, Saskatoon, Saskatoon Health District, fax of February 4, 2004.

SECTION 10:

A PROFILE OF ABORIGINAL CHILDREN IN REGINA: PROSPECTS AND CHALLENGES

SASKATCHEWAN INSTITUTE OF PUBLIC POLICY
UNIVERSITY OF REGINA
JANUARY 2004

INTRODUCTION

"These kids they're gonna be okay
When they're ready, they gonna take us places we never dreamed of
Man, the universe is coming at them
A million miles an hour
Incredible dreams they must have
The worlds they have travelled already
These young travellers they'll be okay
And when they're ready
The stories they'll tell us
The worlds they'll take us
I can hardly wait"[1]

Even though Aboriginal peoples have made considerable progress in the past few decades, many Aboriginal children and youth in Regina continue to be marginalized and socially excluded. The aspirations and dreams of many of these children are unfulfilled, mainly because they live in poverty, a situation complicated by racism and a history of cultural oppression. This report attempts to shed light on some of the lingering problems and challenges that continue to face Aboriginal children in Regina in their everyday lives, while, at the same time, highlighting some of the accomplishments achieved by those children and their families. This paper also aims to identify some of the important issues that emerge from an analysis of available data on Aboriginal children and youth obtained from previously published research. In some ways, this paper provides a useful starting point for further, and more directed, research. Admittedly, this report focuses on a number of economic, physical (health indicators), social, and cultural indicators for a small segment of the Aboriginal population in a single urban area, and even though it makes comparisons where possible with outcomes from similar indicators for the non-Aboriginal/total population, this report should be seen as descriptive rather than prescriptive.

This study clearly recognizes the impact of the family environment on the lives and future prospects of children. The family has a profound influence on a child's physical, social, and cognitive development. Families that struggle with low incomes and insecurity, and are vulnerable to external forces, such as ill health, usually have difficulty providing adequately for their children. There are some positive signs in the Aboriginal communities in Regina, however, including the emergence and growth of a small Aboriginal middle class, which has the potential to influence the lives of the whole community. Rarely does a society prosper without a viable middle class. Moreover, many young Aboriginal people possess the tremendous resolve necessary to overcome their difficult socio-economic circumstances, an observation that was made in the 2003 Report of the Standing Senate Committee on Aboriginal Peoples:

> *"When we first began our examination into issues affecting urban Aboriginal youth, we could not have imagined the unshakeable resilience displayed by many of these young people in the face of so many daunting challenges. We were impressed by their strength, their quiet determination, their honesty in talking frankly about their lives, and their sincere desire to overcome their circumstances, however difficult it may seem at times."*[2]

The Aboriginal population in Saskatchewan, as in other parts of Canada, has historically experienced enormous economic and social hardships. Poverty, family instability, high rates of mobility, and social exclusion from much of Canadian society has been the reality of the 20th and early 21st century for many Aboriginal people. Life, both on and off the reserve, has been full of obstacles and challenges, including barriers to education and employment. The obstacles Aboriginal peoples have experienced are well-documented, and extensive research

---

[1] Duncan Mercredi (1995) in The Standing Senate Committee on Aboriginal Peoples, *Urban Aboriginal Youth: An Action Plan for Change*, Final Report (October 2003)

[2] The Standing Senate Committee on Aboriginal Peoples, *Urban Aboriginal Youth: An Action Plan for Change*, Final Report, October 2003

has been undertaken elsewhere to identify the roots of those problems, analyze their impact on Aboriginal as well as non-Aboriginal people, and find policy solutions. However, much of this work has been directed at the Aboriginal population as a whole or in individual provinces on an aggregate basis. Less attention has been focused on separate and smaller segments of the Aboriginal population, such as people living in the urban areas of a particular province or even individual population groups within a specific urban area.

Many of the challenges that face Aboriginal peoples in urban areas are sometimes specific to an area or region, and differ from the problems and challenges that their counterparts on-reserve or in other parts of the country experience. Recent trends show that a substantial portion of the Aboriginal population in Saskatchewan has migrated into urban areas, mainly Regina, Saskatoon, and Prince Albert, which has presented new challenges to them as they struggle to become part of the economic and social fabric of these cities. Despite the difficulties, however, there have been some encouraging signs recently. More Aboriginal people, for instance, are now graduating from high school and obtaining post-secondary degrees than in the past. While some Aboriginal people might return to the reserves upon graduation, many of them remain in the city and become an integral part of the urban lifestyle.

DEMOGRAPHIC CHARACTERISTICS OF REGINA - TOTAL AND ABORIGINAL POPULATION OVERVIEW

Regina has experienced a significant demographic change in the last two decades. Between 1996 and 2001 the Regina Census Metropolitan Area (CMA) experienced a 0.4 per cent decrease in population.[3] Even so, there was an increase of 15 per cent in the Aboriginal population, bringing the Aboriginal population to 8.3 per cent of the Regina CMA population in 2001.[4] At close to 16,000 residents, Regina's Aboriginal population is large compared to that of other urban centres in Canada. Despite its smaller total population size, compared to other CMAs in the country, the Regina CMA ranks seventh in the nation in terms of the number of residents reporting Aboriginal identity. When the measure of percentage of total CMA population is used, the Aboriginal population in Regina ranks as the third largest in Canada.[5] Regina is also a young city relative to other CMAs due primarily to a young Aboriginal population.[6] The Aboriginal population in Regina is also much younger than the total Regina population, with the 0-19 age group comprising nearly 50 per cent (7,645 people) of the Aboriginal population, a figure that is close to double the non-Aboriginal share of the under 20 age group[7] (Figure 1). Regina also has a young median age (age at which half of the population is older and half is younger) compared to other CMAs, ranking seventh with a median age of 35.9.[8] However, with a median age of 20.7, the Aboriginal population is much younger relative to the total CMA population.[9]

---

[3] Statistics Canada, "Highlights for Regina (CMA), Saskatchewan," *2001 Census, 2001 Community Profiles.*

[4] Statistics Canada, "Population reporting Aboriginal identity in selected census metropolitan areas (CMA) and census agglomerations (CA) with an Aboriginal population of 5000 or more, 1996 and 2001, *2001 Census, Aboriginal Population Profile.*

[5] *Ibid.*

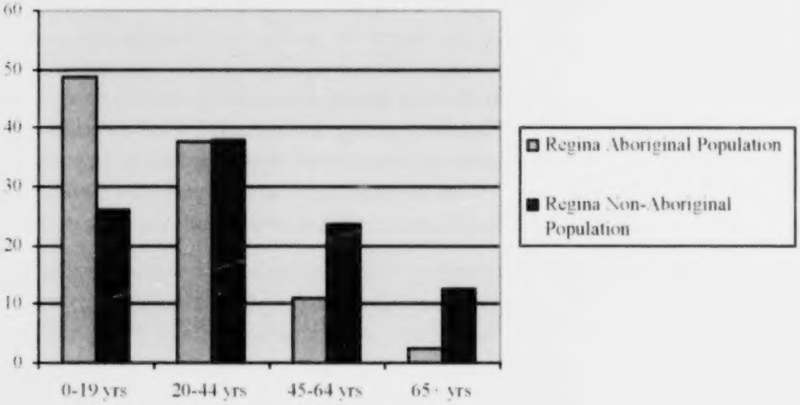
[6] Statistics Canada, "Age and Sex, Percentage Distribution for Both Sexes, for Census Metropolitan Areas and Census Agglomerations - 100% Data," *2001 Census, Profile of the Canadian population by age and sex: Canada Ages.*

[7] Statistics Canada, "Aboriginal Identity (8), Age Groups (11B) and Sex (3) for Population, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2001 Census - 20% Sample Data, *2001 Census, Aboriginal Peoples of Canada.*

[8] Statistics Canada, "Age and Sex, Median Age for Both Sexes, for Census Metropolitan Areas and Census Agglomerations - 100% Data," *2001 Census, Profile of the Canadian population by age and sex: Canada Ages.*

[9] Statistics Canada, "Population Statistics for: Regina (CMA), Saskatchewan," *2001 Census, Aboriginal Population Profile.*

FIGURE 1: REGINA CMA ABORIGINAL AND NON-ABORIGINAL POPULATIONS AS A PERCENTAGE OF IDENTITY POPULATION AND BY AGE GROUP, 2001



Source: Statistics Canada, "Aboriginal Identity (8), Age Groups (11B) and Sex (3) for Population, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2001 Census – 20% Sample Data, *2001 Census, Aboriginal Peoples of Canada.*

Despite the increase in the proportion of young Aboriginal people in Regina, there are serious quality of life differences between the Aboriginal and the non-Aboriginal population. Labour force indicators reveal clear differences in the experience of the Aboriginal and total population. The labour force participation rate of the Aboriginal population in Regina was 12 per cent below total CMA population figures in 2001. The 2001 Census also showed unemployment among the Aboriginal population as being more than three times as high as that of the overall Regina population.[10] And, at $12,996 per annum, the median total income[11] of Aboriginal persons in Regina over age 15 was approximately half that of the total population.[12] These factors clearly have an impact on children in those families.

This report attempts to look at those children and youth in the Aboriginal population in Regina, a group that is increasing and will have a major impact on the social and economic life of the city in years to come. The intention here is to examine some of the challenges these children face in school and in their family. An attempt is also made to describe the broad characteristics of Aboriginal families, which exert enormous influence on the lives of children. However, it should be noted at the outset that there are problems with the available data. There is simply not enough data readily available, and much of what is presented, lacks any consistency with age.

ECONOMIC ISSUES

The Aboriginal population in Regina faces a number of problems and challenges, but poverty is, by and large, the most serious problem for Aboriginal families and their children. Economic conditions are usually at the core of many problems for most families as they affect not only the economic but also the social and physical well-being of children and youth. Regina is no exception to this phenomenon. The Council on Social Development Regina, Inc. released a report in October 2002, in which it stated that:

> *"Poverty is a reality for many people in Regina and it affects every area of a child or youth's life. Poverty is an issue for many families in Regina and as such is a recurring theme in the literature and in the comments*

---

[10] Statistics Canada, "Work Statistics for Regina (CMA), Saskatchewan," and "Labour Force Indicators for the Aboriginal Identity Population," *2001 Census, 2001 Aboriginal Population Profile.*

[11] Refers to the total money income received during calendar year 2000.

[12] Statistics Canada, "Income Statistics for Regina (CMA), Saskatchewan," *2001 Census, 2001 Community Profiles.*

> *of key informants. Poverty has been linked to unemployment, low minimum wage, low levels of literacy, inadequate educational opportunities and racism. Without adequate resources, basic needs such as food, shelter, clothing, emotional and social support, safety and health are difficult to meet."*[13]

Much of the data collected and analyzed in this report describe the economic situation of Aboriginal adults with regards to a variety of factors, including educational attainment levels and employment opportunities, but the data do not reveal any specific and directly identifiable results and trends among children. However, we must not detach children from their families in our analysis of the factors that affect children's well-being. The family environment is a powerful influence in a child's life. Family dynamics will determine to a large extent a child's physical and emotional development, particularly in the first several years of life, and also have an impact on the child's future prospects in terms of education, employment, and social status.

Researchers and policy analysts have described poverty as the greatest obstacle preventing Aboriginal people to become more involved in the economic and social life in Regina. Using Canada's unofficial definition of poverty is based on Statistic Canada's Low Income Cut-offs (LICOs)[14], the poverty rate is too high for Aboriginal peoples. In 2001, the estimated child poverty rate in Canada was 15.6 per cent while that of Saskatchewan was 17.6 per cent.[15] Yet, the poverty rate among First Nations children ages 0-14 living off-reserve in Saskatchewan in 2000 was 55.9 per cent, while the corresponding number for Regina was 61.3 per cent. The incidence of poverty among Métis children ages 0-14 living off-reserve in Saskatchewan in 2000 was 36 per cent, while the corresponding number for Regina was 45.7 per cent.[16] These are staggering statistics that will have long-term negative economic consequences not only for the Aboriginal child but for the whole non-Aboriginal population too. The poverty rate of the Regina Aboriginal population in 1995 was 55 per cent, more than double the total population figure of 23.9 per cent.[17]

However, poverty should not be examined in isolation, because it is not only associated with low incomes or high dependency on the welfare system. Poverty has deeper roots and encompasses several aspects of today's economic and social environment, including unemployment, inadequate education and training, large number of single-parent families, and high cost of living. All these factors contribute to financial dependency and, consequently, poverty. In this regard, it is important to recognize the fact that child poverty is directly linked to adult or parent poverty. Examining children and parents separately would simply be ignoring many of the causes of child poverty. The poverty rates of the Aboriginal youth population have long been linked to historically low educational attainment levels and continue to have important long-term implications for both the Regina and Saskatchewan economies.

> *"[I]n 1996, Aboriginal youth without a high school certificate reported an unemployment rate of 40 per cent. In contrast, unemployment rates were only half as high for those with secondary (23%) or college (20%) completion. Young Aboriginal people with a university degree recorded the lowest rate, at 9 per cent. Thus, an increasing important mitigating factor offsetting poor employment outcomes for Aboriginal youth is education."*[18]

An examination of 2001 Census data reveals serious (though similar) discrepancies between income, earnings, and labour force characteristics for Regina's total population and its Aboriginal population. At just under $13,000 per year, the 15+ Regina Aboriginal population median income figure is about half that of the total population median income of $24,000. Average earnings of the Regina CMA's 15+ Aboriginal labour force were $20,000, or two-thirds that of the total population average. Income and earnings are largely reflective of labour force participation rates, but the labour force participation rate of Aboriginal peoples in Regina (58.4 per cent) is about 12 per cent below total population rates. And, at close to 21 per cent, the unemployment rate of the

---

[13] The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth* (The Centre for Excellence for Child and Youth Centred Prairie Communities – Regina Site: 2002, p. 14).

[14] Lee, K., *Urban Poverty in Canada: A Statistical Profile* (Canadian Council on Social Development: April 2000).

[15] Statistics Canada's, *Income Trends in Canada 2001*, 13F0022XCB in Campaign 2000, *Honouring Our Promises: Meeting the Challenges to End Child and Family Poverty*: 2003 Report Card on Child Poverty in Canada.

[16] Hunter, G. and Douglas, F., *Saskatchewan Child Poverty Report*, Social Policy Research Unit, Faculty of Social Work, University of Regina, November 2003.

[17] Lee, K., *Urban Poverty in Canada: A Statistical Profile* (Canadian Council on Social Development: April 2000).

[18] Senate of Canada, *Urban Aboriginal Youth: An Action Plan for Change*, Final Report of the Standing Committee on Aboriginal Peoples, October 2003, p. 32.

Aboriginal population is about 15 per cent higher than total population figures.[19] Since the disparities between total and Aboriginal population figures and the economic conditions of Aboriginal peoples do not vary significantly between Regina, Saskatoon, and Prince Albert,[20] it might be expected that the issues, challenges and successes of Aboriginal children in Saskatoon and Prince Albert are similar to those of Aboriginal children in Regina.

The lower labour force participation rate of the 15+ Aboriginal population is also evident in national statistics on youth employment. The Final Report of the Standing Senate Committee on Aboriginal Peoples noted that only 42 per cent of Aboriginal youth have jobs compared to 68 per cent for non-Aboriginal youth.[21] The Council on Social Development Regina has noted the relationship between the low educational attainment of Aboriginal youth and long-term economic consequences for the province:

> *"Unemployment is a significant concern for youth because of their lack of specific skills and experience... With low or little education, there is virtually no hope that these youth will be able to secure anything more than a minimum wage job, if that, in the growing information economy. This will cause a greater employment gap in the future, particularly as the growth of the Aboriginal population far exceeds the rate of job creation. The need for higher-level skills and specialized knowledge has never been more acute as the projected labour shortages in Regina are primarily in the information technologies and health-care, biotechnology and agribusiness sectors."*[22]

The far-reaching consequences of low educational attainment levels and low rates of labour force participation among the Saskatchewan Aboriginal population were also examined in a recent Saskatchewan Institute of Public Policy study of 2001 Census statistics. Coupled with the largest percentage of seniors and the oldest workforce of the provinces, the low educational attainment and workforce participation currently exhibited in the Aboriginal population has serious implications for the provincial labour supply and socio-economic sustainability in the province, including the sustainability of the health care system. However, the study notes that if educational and labour force figures are increased to be closer to non-Aboriginal figures, when labour force shortages are predicted to become acute in about a decade, Saskatchewan could well be better-placed than other provinces, and many parts of the industrialized world, due to its very young Aboriginal population.[23]

Employment and income factors have a strong relationship to housing affordability and, consequently, the quality of housing. Housing conditions are tied to the well-being of children and affect the quality of health of a population, in general. A large portion of the Aboriginal population in Regina lives in substandard housing. The available data indicate that one-fifth of the Aboriginal population occupied dwellings in Regina that required major repairs in 2001.[24] Mobility rates are also high among this population. Remaining in the same residence brings stability to the family and the community, and might influence the ability of children to do well in school. Statistics from the 2001 Census reveal that about 70 per cent of the Regina Aboriginal population experienced a change in residence over the preceding 5-year period.[25] In addition, only 32 per cent of Aboriginal people own their homes compared to 68 per cent of non-Aboriginal people.[26]

---

[19] Statistics Canada, "Population Statistics for: Regina (CMA), Saskatchewan," *2001 Census, 2001 Aboriginal Population Profile.*

[20] Statistics Canada, "Population Statistics for: Saskatoon (CMA), Saskatchewan and Prince Albert (CA), Saskatchewan," *2001 Census, 2001 Community Profile and 2001 Aboriginal Population Profile.* The 2001 Census recorded the median total income of the 15+ total population in the Saskatoon CMA as $21,605, whereas the corresponding figure for the Aboriginal population was $12,437. In the Prince Albert CA, total median income was $20,678 and $14,044 for the total and Aboriginal populations, respectively. The unemployment rate in 2001 was 6.7% for the Saskatoon total population and 22.3% for the Aboriginal population. Discrepancies in the unemployment rate between the Prince Albert CA total population (8.8%) and Aboriginal population (16.2%) were similarly evident in the latest census statistics.

[21] Statistics Canada's defines 'youth' as those persons aged 15 to 24 years.

[22] The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth* (The Centre for Excellence for Child and Youth Centred Prairie Communities – Regina Site: 2002, pp. 16-17).

[23] Janice Stokes, "Demographic Trends and Socio-Economic Sustainability in Saskatchewan: Some Policy Considerations," *Saskatchewan Institute of Public Policy*, Policy Paper 19 (October 2003).

[24] Statistics Canada, "Family Dwelling Statistics for Regina (CMA), Saskatchewan," *2001 Census, 2001 Aboriginal Population Profile.*

[25] Statistics Canada, "Population Statistics for: Regina (CMA), Saskatchewan," *2001 Census, 2001 Aboriginal Population Profile.*

[26] *Ibid.*

The situation, however, is not bleak in all communities. There is hope coming from a number of community-based organizations involved in housing projects and initiatives directed at providing adequate and affordable housing to Aboriginal people. Moreover, some Aboriginal people already live in above-average houses and apartments in more affluent neighbourhoods in the city, and have achieved a reasonably high social and economic status in their communities, a part of the new Aboriginal middle class.

Because the demographic profile of the young Aboriginal population in Regina shows an increasing number of Aboriginal children relative to the overall Aboriginal and non-Aboriginal population, this has some important implications for government priorities in the short and medium term. So far, there has not been a consistent government policy to deal with Aboriginal economic issues pertaining to employment. Over the last few decades, the government policy on Aboriginal peoples has been shaped, for the most part, by the federal Department of Indian Affairs. Although a great deal of attention has been given to Aboriginal issues, there has been little success in developing a stable and coherent framework for the analysis of the issues, let alone a clear policy on how to address them. There has also been very little in the way of addressing urban and community-specific issues and challenges that Aboriginal peoples face. The exception might very well be a number of locally based non-profit organizations that deal with small segments of the Aboriginal population. These organizations have done a commendable job in providing counseling and support to Aboriginal people in need.

SOCIAL ISSUES AND EDUCATION

There are many factors that affect the social development of all children. It is not, however, the purpose of this project to explore all of these these aspects, as they relate to Aboriginal children, in great detail, but simply to identify some of the most serious ones. It is important for those who are attempting to address the social difficulties to understand the strong identity that Aboriginal persons have to their traditional environment. Their home reserve is a major social/emotional foundation and a necessary support for Aboriginal families in Regina. Even though it may have been years since they last visited their home, it remains an essential point of identity and recognition among Aboriginal people. The tradition of relying on the extended family for all kinds of support is inherent in Aboriginal culture and it is the first place they look for help. With many families in disarray — or just the fact that their family now lives hundreds of kilometres away from their extended family — this vital support is lost. The connectedness to culture and family is often maintained by regular visits, sometimes for extended periods of time. Although disruptive to the children's education, and relationships in the city, the family sees little choice. The family is driven back and forth, seeking help to alleviate the social difficulties that derive from a city life. Then, while living in the city, other members of the family come and "visit", disrupting routines and commitments. The extended family is both a blessing and a curse.[27]

The Mobile Crisis Unit is a 24-hour response team of social workers who respond to any request for help. Nothing is considered too small not to be addressed as soon as possible. It is interesting, because this unit also responses to complaints of child protection and neglect. Why would these mothers call the agency that is known to "take away children"? It is a complicated and surprising finding, but these mothers know that if they call the Mobile Crisis Unit, they will not be put "on hold". They will speak directly to a "real" person whose job is to help them night or day. The mothers trust these social workers in ways that they do not trust other professional "helpers". Even if the worker cannot deliver the help or service, these mothers know that the worker will find and call the appropriate agency and that agency will take their needs seriously. They see these workers as knowledgeable and skilful but more importantly, powerful.[28]

The prevalence of violence in Aboriginal communities is another social issues that impacts on Aboriginal families and children. Aboriginal children in Regina are overrepresented in transition-house usage. Nearly three quarters (73.9%) of children that resided with their caregivers in the city's 3 transition houses for women leaving abusive relationships in 2002-03 were Aboriginal.[29] Sofia House (second-stage housing) in Regina reports that half of the children that pass through this agency are Aboriginal (slightly more than half of the women reporting their status as Aboriginal).[30] Many Aboriginal children do not have or do not live with their families, which is another problematic factor in their development. The Child Welfare League of Canada, in a recent report, states that there are 2,710 children in foster care in Saskatchewan, of whom, 67 per cent are of Aboriginal identity.[31]

---

[27] Interview with Doug Durst, Faculty of Social Work, University of Regina, December 2003.

[28] Interview with Doug Durst, Faculty of Social Work, University of Regina, December 2003.

The United Way of Regina in cooperation with the Regina Regional Intersectoral Committee (RIC) engages in the provision of various social support programs and services targeting Aboriginal persons. Twenty-two per cent of the total services provided are in the area of community social supports. These include direct or indirect involvement in financing, administration, technical, and educational support in the delivery of social services where limitations or gaps exist.[32]

Another organization that plays an important role in providing support services to parents and children in Regina is the North Central Family Centre. Over the last four and a half years it has been working towards alleviating many social, health and economic problems, including poor housing conditions, family instability, crime, poverty, substance abuse, and underemployment, faced by residents of North Central Regina, particularly Aboriginal persons. The primary focus, however, is on children at risk living in the neighbourhood. North Central is one of the areas in the city with a large Aboriginal population.[33] According to the 2001 Saskatchewan Hospital Services Plan, there are 3,886 Registered Indians living in North Central, or 31.9 per cent of the total Registered Indian population in Regina. Forty-eight per cent of all children and youth under the age of 15 in the North Central area are Aboriginal. According to the Report on the Community Vision and Action Plan, prepared for the North Central Community Partnership, 35 per cent of the families living in North Central Regina are also one-parent families.[34] Approximately 70 per cent of people who use the services of the North Central Family Centre are Aboriginal children between 0 and 14 years of age and approximately 20 per cent are 15-19 year-olds.[35] The SCEP Centre (Socialization, Communication, and Education Program) provides programming to children aged 2 to 7 years who exhibit significant to severe social, emotional and behavioural difficulties. SCEP reports that its Aboriginal client base is growing, and that between September 2002 and June 2003, 59 per cent of the children enrolled were Aboriginal.[36]

Education is also important for the cognitive and social development of a child. A high level of education can make a big difference in a child's life in terms of economic stability and social inclusion in the future. Conversely, the lack of education contributes to a detachment from the labour force and, usually, dependency on the welfare system. One of the main challenges for Regina is to work with the Aboriginal communities to improve the educational level of Aboriginal children. This will not be an easy task as the Council on Social Development Regina, Inc. recently described some of the most serious impediments to improving school outcomes for the Aboriginal population:

> "There is an increasing Aboriginal population in the education system, and some studies suggest that these students encounter more barriers in staying in school. The majority of at-risk students come from families with a low level of education, no necessary support mechanisms, and negative school experiences. Youth that drop out of school have a higher risk of difficulty with the law, becoming parents at very young ages, becoming injured, committing suicide or abusing drugs and alcohol."[37]

---

[29] Information provided by the provincial Department of Community Resources and Employment, January 2004.

[30] Information provided by Sofia House, January 2004.

[31] Farris-Manning, S. and Zandstra, M., *Children in Care in Canada: A summary of current issues and trends with recommendations for future research* (Foster LIFE Inc., 2003)

[32] McGovern, K., *Building on Our Strengths*, Final Report Prepared for United Way of Regina and the Regina Regional Intersectoral Committee, December 6, 2002.

[33] Information provided by the North Central Family Centre, January 2004.

[34] Parnes, L., *Report on the Community Vision and Action Plan*, North Central Community Partnership, May 2003.

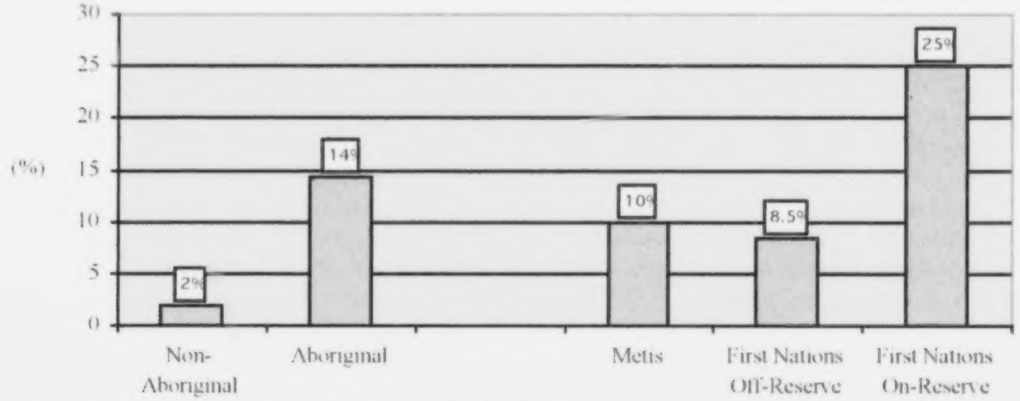
[35] Information provided by the North Central Family Centre, January 2004.

[36] Information provided by the SCEP Centre, January 2004.

[37] The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth* (The Centre for Excellence for Child and Youth Centred Prairie Communities – Regina Site: 2002, p. 24)

Of course, the socio-economic factors also influence a child's attachment to the education system and, consequently, their whole life experience. Many Aboriginal children have encountered incidences of poverty and violence, for instance, which impacst negatively on school outcomes. According to Statistics Canada, the main reasons given for Aboriginal students not completing elementary or high school in 2001 were: "pregnancy/taking care of children" (22.2%), "bored with school" (15.3%), "wanted to work" (14.2%), "had to work" (9.9%).[18] Despite those impediments, there is hope that Aboriginal children can have a brighter future. Already, there is an increasing number of Aboriginal youth graduating from high school, as we noted above, and finding employment. Some of these young people continue their education at the college and university level, and obtain knowledge and skills that allow them to work more specialized and technology-based jobs.

FIGURE 2: PERCENTAGE OF SASKATCHEWAN RESIDENTS AGED 15 TO 24 WITHOUT GRADE 9



Source: Saskatchewan Education, *Saskatchewan Education Indicators* 2000, p. 69

Yet, we know that Aboriginal children do not currently succeed at the rate for non-Aboriginal children. As Figure 2 illustrates, the number of residents aged 15 to 24 that have not completed Grade 9 is significantly higher for the Aboriginal population than for the non-Aboriginal population. Additionally, data for this age group shows that First Nations students are more likely to drop out of high school and post-secondary education than their non-Aboriginal counterparts. Whereas 60 per cent of non-Aboriginal students between 15 and 24 years of age are still in school, the corresponding percentage for First Nations students is 49 per cent.[19] It is worthy to note from Figure 2 that First Nations children perform better off the reserve than on.

The data in Figure 3 shows mixed results in terms of the amount of time that Aboriginal students are taking to graduate from high school after entering grade 10. The overall trend indicates general improvement over time, but the percentage of students talking three or more years to graduate is still fairly high.

---

[18] Statistics Canada, "Commonly reported reasons for not completing elementary/high school by sex, Aboriginal identity non-reserve population aged 15 to 34, Saskatchewan, 2001, *Aboriginal Peoples Survey*, 2001.

[19] Saskatchewan Education, *Saskatchewan Education Indicators* 2000, p. 69 and Federation of Saskatchewan Indian Nations, *A Research Report on The Schooling, Workforce and Income Status of First Nations Persons in Saskatchewan*, January 2002.

FIGURE 3: PERCENTAGE OF SASKATCHEWAN ABORIGINAL STUDENTS GRADUATING GRADES 10-12 AFTER ENTRY IN GRADE 10, 1992-93 TO 1998-99 GRADE 10 COHORTS

Grade 10	Years from Start of Grade 10 to High School Completion						Still
Year	3	4	5	6	7	8	Registered[40]
1992-93	30.0%	41.4%	46.3%	47.6%	48.0%	51.1%	1.3%
1993-94	24.8%	34.3%	37.4%	40.9%	42.0%	44.4%	2.1%
1994-95	37.4%	43.4%	46.4%	49.2%	52.2%		3.7%
1995-96	31.5%	37.3%	41.6%	44.6%			4.8%
1996-97	35.3%	44.8%	47.7%				9.5%
1997-98	43.3%	49.3%					16.5%
1998-99	41.9%						37.0%

Source: Saskatchewan Learning, *Saskatchewan Education Indicators: Kindergarten to Grade 12, 2002.*

Many Aboriginal students enrolled in community schools have high rates of mobility in and out of schools and between schools, which surely disrupts their academic performance. New enrolments during the 1999-00 school year were 50.4 per cent of the enrolment at the beginning of the year and dropouts were 43.6 per cent. These numbers, however, hide the fact that Aboriginal student mobility decreased and more students stayed in school compared to the 1996-97 school year when new enrollments were 53.5 per cent and dropouts were 51.7 per cent of the enrolment at the beginning of that school year. Furthermore, we need to treat the above statistics with caution, as there might be double counting. Some Aboriginal students who dropped out might have enrolled again in the same or different community school in the same year.[41] The Standing Committee on Aboriginal Peoples in the Senate of Canada also recognizes that there has been improvement in educational outcomes for Aboriginal students:

> *"However, it should be recognized that not every urban Aboriginal youth faces the worst: there are some areas of hope. Urban Aboriginals have a higher level of education than those on-reserve. Some urban centers – notably Thunder Bay, Montreal, Victoria, Toronto and Regina – manage to retain Aboriginal youth in school at rates nearing 80%, which is close to the 83% average attained by non-Aboriginal youth. But as for other socio-demographic factors, it is the large prairie cities of Edmonton, Calgary, Regina, and Saskatoon and Winnipeg which, statistically, seem to present the greatest challenge to young Aboriginal people."*[42]

All children need role models, and Aboriginal children need to see Aboriginal teachers in the education system. According to the Saskatchewan Human Rights Commission, school divisions with Education Equity Programs employed more Aboriginal teachers by the late 1990's than they did in the late 1980's. However, the student-to-Aboriginal-teacher ratio moved in the opposite direction, because the number of Aboriginal students increased during the period. There were 152 (4.2% of all teachers) Aboriginal teachers in 1989-90, and 266 (6.5%) in 1998-99. Aboriginal student enrolment grew from 10,624 (16.1% of all students) in 1989-90 to 14,085 (20.4%) in 1998-99. There were 435 students per Aboriginal teacher in 1989-90 and only 260 in 1998-99.[43] Clearly, the ratio must be lowered.

Saskatchewan has implemented a number of programs and initiatives to help Aboriginal students receive the best possible education without compromising their social and cultural values and beliefs. The Core Curricula in schools now provides for the inclusion of Aboriginal content and cultural perspectives, which allows for a smoother integration of Aboriginal students in the school system by encouraging them to retain their connection to Aboriginal traditions and education methods. *The Evergreen Curriculum*, for example, is an on-line program that will enable teachers to become familiar with new developments and trends in Aboriginal education, and, hopefully, build them into the curriculum. Several Native Studies courses have already been developed, enhancing the Aboriginal content in the school curriculum and providing the opportunity to hire more Aboriginal teachers who might incorporate their values and perspectives on education.[44] It is hoped that these measures will attract Aboriginal students to attend school on a regular basis. In addition, the existing collaborative partnerships between the provincial education system and Aboriginal communities, which aims to increase family involvement in the schools, have been expanded to more directly involve Aboriginal peoples in the planning and decision-making process. Such partnerships include increased cooperation and shared management and governance in the provincial education system.[45]

---

[40] The percentages in this column refer to students that were still taking classes at some stage during the 2000-01 school year, which does not necessarily mean these students were still registered at the end of the school year.

[41] Saskatchewan Education, *Saskatchewan Education Indicators: Kindergarten to Grade 12, 2000.*

[42] Senate of Canada, *Urban Aboriginal Youth: An Action Plan for Change*, Final Report of the Standing Committee on Aboriginal Peoples, October 2003.

[43] Saskatchewan Education, *Saskatchewan Education Indicators: Kindergarten to Grade 12, 2000.*

In terms of institutional reform of the education system, there have been attempts to encourage Aboriginal involvement and introduce a set of indicators to track the progress. A report by Saskatchewan Education (now Saskatchewan Learning), released in 1999, presents a list of such indicators: demographic information on the Saskatchewan and Canadian Aboriginal population; social factors; economic factors; Aboriginal students and teachers in Saskatchewan; post-secondary education.[46] Saskatchewan Education states that: *"Along with the Saskatchewan Education Indicators program, the Aboriginal Education Indicators program is a means of monitoring the school system's performance, identifying its successes and shortcomings in Aboriginal education, and acquiring information for decision-making."*[47] However, it is too early to assess the impact of these innovations.

A project developed to encourage at-risk students focuses on Regina's 'hidden youth', or children who live on the street or in unstable family environments, many of whom are Aboriginal. In its first stage, the project's objectives were to

> *1. Determine the prevalence of youth on the streets and not attending school*
>
> *2. Explore the physical, social, educational, and family needs of these young people*
>
> *3. Identify issues/problems related to effective and coordinated service provision."*[48]

The project involved the use of various data collection techniques (both quantitative and qualitative), including interviews with the representatives of the target population, focus groups with stakeholders, dialogue groups with street youth, surveys to government and non-profit organizations, and a seminar, in an attempt to analyze the situation of children living on the street. A report on the project concluded that there were a number of risk factors contributing to the phenomenon of children living on the street, and the perilous and destructive lifestyles these children lead. The factors include: lack of opportunities because of limited access to education and employment; inadequate policies to support these young people; limited access to social programs and services, and others. The report recommends how to improve the lives of street children and gradually have them leave their current environment. The recommendations focus on establishing long-term strategies for preventing and rehabilitating street children, increasing support to organizations involved in the provision of services to these children, and setting up drug and alcohol treatment programs and facilities. The report's recommendations also include the establishment of specific initiatives to deal with the problem and the provision of appropriate training to people who work with street children.[49] The United Way of Regina and RIC developed programs directed at helping Aboriginal peoples in Regina in the area of education. In fact, 20 per cent of the services for Aboriginal peoples provided by United Way of Regina and the Regina Regional Intersectoral Committee include employment/education and learning support.[50]

---

[44] Saskatchewan Education, *Aboriginal Education Initiatives in Saskatchewan Education*, March 2000.

[45] Saskatchewan Learning, *Building Partnerships: First Nations and Métis Peoples and the Provincial Education System* (Fall 2003).

[46] *Ibid.*

[47] Saskatchewan Education, *Aboriginal Education Initiatives in Saskatchewan Education* (March 2000, p. 15).

[48] Saskatchewan Instructional Development and Research Unit, *Regina's Hidden Youth: Final Report* (University of Regina: 1999, i).

[49] *Ibid.*

[50] McGovern, K., *Building on Our Strengths*, Final Report Prepared for United Way of Regina and the Regina Regional Intersectoral Committee, December 6, 2002.

HEALTH ISSUES

Health is an important indicator of well-being and provides several key elements with which to evaluate a child's prospects of physical and mental development. Such health indicators, as the level of pre-natal care, early childhood growth, puberty, sexuality, pregnancy, and disease susceptibility can tell us much about a child's well-being.[51] To a large extent, such factors determine the life expectancy of a child, and its chances of being a healthy member of society. Regina is regarded as one of the healthier cities in Canada to raise a family, but it, nonetheless, experiences problems with nutrition and the provision of safe and healthy environments for children. This problem is particularly acute for Aboriginal and First Nations children. The Council on Social Development Regina, Inc. has outlined a number of issues that need to be urgently addressed if we are to sustain and grow healthy and prosperous communities:

> *"Concern was raised about lifestyle choices of the young that are causing health problems such as drugs, alcohol, sexually transmitted diseases, obesity, sedentary lives and malnutrition. Some community workers and professionals felt there was a lack of treatment centers to support youth addictions to drugs and alcohol. Many expressed concern over the lack of early childhood prevention programs in Regina. Some community workers, parents and professionals expressed concern over the lack of health services and equipment support for disabled children."*[52]

The available data suggest that the physical and mental health of Regina's Aboriginal population and Aboriginal children is poor compared to that of the city's total population. For example, hospital admissions for Aboriginal children in the Regina Qu'Appelle Health Region are higher, especially for respiratory and gastrointestinal cases, than for the general population. Suicide rates among Aboriginal youth are estimated to be 4 to 6 times higher than for the non-Aboriginal population. Research in the Regina Health District (now part of the Regina-Qu'Appelle Health Region) revealed that Aboriginal people have twice the rate of diabetes and higher rates of parasitic and infectious diseases, including tuberculosis. Aboriginal people participate less in screening and prevention programs. Health conditions clearly have life-limiting consequences, and statistics show that life expectancy for Registered Indians at birth is 7 to 8 years less than for Canadians generally.[53]

One health (and social) issue with life-long consequences is the incidence of teenage pregnancy. Teenage pregnancy rates among Aboriginal youth in Regina are estimated to be 4 times higher than for the non-Aboriginal population. In the Regina Health District, research showed that there were 30 live births per 1,000 women in the 15 to 19 age group (general population) compared to 115 live births per 1,000 Aboriginal young women in the same age group. The Regina Qu'Appelle Health Region estimates that 65 per cent of babies served by the Mother Baby Unit are Aboriginal.[54]

One of the biggest problems is the lack of adequate food and clothing for many Aboriginal children in Regina. Malnutrition is reported as a leading cause of premature birth, low birth weight, and increased infant mortality. Malnutrition is a result of poverty and is especially prevalent in poor communities with substandard housing, high unemployment, and high number of single-parent families. Another indicator of poverty is the high percentage of infants born to Aboriginal teenage women, many of whom without sufficient means to support a family. These factors, in turn, contribute to a higher incidence of diseases and long-term health problems for the newly born.[55]

Malnutrition and subsequent health problems are usually caused by poverty. The lower incomes associated with Aboriginal peoples (discussed above) create an unhealthy environment for a child's development. Malnutrition leads to a whole group of other problems associated with early childhood development. It causes children to have low academic performance in school, thus increasing the risk of dropping out and, subsequently, these children have limited access to the labour market, especially jobs that require specialized knowledge and skills. Lower incomes are often the result. Furthermore, many of these children become dependent on the social welfare system later in life. Some poor children end up on the street begging and often the victims of sexual exploitation. The abuse of alcohol and drugs, and a very low attachment to the broader society, as well as living dangerous and damaging lives, are not uncommon outcomes of poor living conditions.

---

[51] The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth* (The Centre for Excellence for Child and Youth Centred Prairie Communities – Regina Site: 2002).

[52] *Ibid.* p. 42.

[53] Regina Qu'Appelle Health Region, *Improving First Nations and Metis Health Outcomes: A Call to Collaborative Action*, 2003.

[54] *Ibid.*

[55] Confidential interview, January 2004.

A number of non-profit and community-based organizations in Regina have tried to alleviate the problem of malnutrition by serving meals, and giving food hampers to Aboriginal children who are not fed regularly at home. One such organization is Chili for Children. It was originally launched with the intention of providing hot lunches to schoolchildren, but later expanded its services to include adults. Lisa Pratt, manager of Regina's hot lunch program, says: *"We don't turn anyone away if we have enough food."*[56] The main objective of the program is to create a safe environment for children, where they can eat and get together with other children. After lunch, the children are ready to return to school, and numerous studies have shown that well-fed and nourished children perform better in school. Nowadays, Chili for Children caters to people of various ages who are in need. On average, they provided for between 150-200 schoolchildren on a given day, most of whom are Aboriginal, who come for lunch to three locations in the city. In 1999, 27,000 meals were served. There are some encouraging results emerging from the work done at Chili for Children. Some teenagers, who have previously taken advantage of the program as kids, are now employed and providing for themselves and their families. Clearly, these youth saw an opportunity and benefited and went on to create stable and financially secure families. The positive influence that Chili for Children has had on the community is illustrated in the words of a teenager, who benefited from the program: *"Most of these kids don't have anything to eat at home… That's the way it is, the way it always was. Things have changed for me. I grew up to be responsible and respectable and now I'm raising my daughter."*[57] The Regina and district food bank also provides food to Aboriginal children in need. Between 1983[58] and 2002 the monthly average number of Aboriginal children who received food items grew from 246 to 4,433. In 2003 (excluding December), this number increased further, to 4,480 Aboriginal children.[59]

Some Aboriginal children in Regina suffer from developmental problems that have necessitated the attention and care of professional health care, social, and community workers. Such problems impact the physical and emotional growth of children, and have a negative long-term impact on their lives as adults. In addition, the high rates of sexually transmitted diseases and pregnancy among Aboriginal youth, the low level of education and high incidence of alcohol and drug abuse contribute to an unhealthy environment for a child's physical and intellectual development. United Way of Regina and the Regina Regional Intersectoral Committee have tried to address some of the health issues and now provide a range of programs and services for Aboriginal peoples (including children). The services available to Aboriginal peoples represent 37 per cent (the highest share) of all services provided by United Way of Regina and the Regina Regional Intersectoral Committee.[60]

Although there has been some improvement in the situation of Aboriginal children with regards to health issues, much work still needs to be done. Some areas that require immediate attention are: assistance to single parents in the area of health care, counseling and job opportunities; promotion of family planning as an instrument of long-term family economic stability; and education on matters of sexuality. Furthermore, financial support is needed for alcohol and drug treatment facilities and shelters for homeless children.

---

[56] Ungar, T., *Chili for Children serves 27,000 meals a year*. Saskatchewan Sage. June 2000.

[57] *Ibid.*

[58] 1983 – May to December.

[59] Information provided by the Regina and District Food Bank Inc., January 2004.

[60] McGovern, K., Building on Our Strengths. Final Report Prepared for United Way of Regina and the Regina Regional Intersectoral Committee, December 6, 2002.

CULTURAL ISSUES

Cultural values and norms are very important for the survival and prosperity of any communities, and Aboriginal communities are no exception. Traditions and customs passed down from generation to generation enhance the intellectual and mental capacity of Aboriginal people and keep them strongly attached to their indigenous environment. There are, however, a number of issues related to culture, which represent a challenge to both Aboriginal and non-Aboriginal people in Regina. Racism and discrimination are among the negative aspects of culture still persisting in our society. At the same time, there are some positive aspects of culture, including diversity, cultural awareness, and the building of a multicultural society.

It is a worrying fact, however, that racism and discrimination are still prevalent in Regina. This affects Aboriginal adults as well as children in their schools. The Council on Social Development Regina, Inc. recognized some of the consequences of racism:

> *"Community literature reports indicate that racism can contribute to low self-esteem, high drop out rates, chronic unemployment, substance abuse and violence. In Regina, there are two primary groups bearing the brunt of discrimination and segregation: Aboriginal people and the poor communities."*[61]

Public awareness of racism needs to be heightened, and more public officials must be involved in the implementation of effective policies to deal with racism everywhere it exists. Unfortunately, people tend to become complacent and unconcerned about racism and discrimination if they are not directly affected, so more proactive initiatives are needed to eradicate the problem. One possible solution is through the promotion of cultural diversity and understanding and appreciation of Aboriginal culture and traditions. Racism is usually a product of ignorance or unawareness of different cultures, so more public education is needed in order to seriously address and overcome this problem in order to facilitate the fostering a stable, productive, and diverse society.

Despite the negative facts, some successful efforts have already been made in the direction of increased cultural awareness and diversity. This process, however, has taken place largely on a city or provincial level. To be effective, its roots must be firmly established in the local communities and neighbourhoods. The United Way of Regina is one of the organizations directly involved in providing cultural programs and services targeting Aboriginal peoples. Fifteen per cent of all services provided by United Way in cooperation with the Regina Regional Intersectoral Committee are for community and cultural development and social enrichment.[62]

CONCLUSION

Aboriginal children in Regina continue to face a number of challenges on the way to becoming full participants in the future development of the city as is demonstrated in Appendix A. In a report of this nature that attempts to take a snapshot of the Aboriginal children and youth in a Canadian city, it is easy to focus on the negative aspects of the lives of Aboriginal children. Perhaps, this report is guilty of that as well, though we have tried to show that the lives for many Aboriginal children have improved considerably in the last decade. One clear indication of that improvement has been in the area of education in Saskatchewan, where there has been an increase in the level of education attainment for Aboriginal youth and a dramatic increase in the number of Aboriginal teachers in Saskatchewan schools. There are, of course, many others indicators of improvement.

However, the improvements in education, for instance, cannot be allowed to obscure the tremendous challenges that Aboriginal children and youth continue to encounter in Regina. Although the data on Aboriginal children is scattered, always a few years old, and not always disaggregated for each urban area, the snapshot of Aboriginal children in Regina is a disturbing one, and one that clearly calls for aggressive action. Although Aboriginal citizens constitute 8.3 percent of the Regina Census Metropolitan Area, they are clearly over-represented in many of the measures that we examined in this report: teenage pregnancy rates are four times that for the Non-Aboriginal youth, 67 percent of all children in care in Saskatchewan are Aboriginal, the incidence of poverty of First Nations children in Regina is 67 per cent, the percent of Aboriginal citizens without Grade 9, and the low median income for Aboriginal families. Each of these measures, in and of themselves, is disturbing, but collectively, they paint a picture of a community that must be either searching for answers to explain their position is a relatively prosperous city like Regina, or else be so disillusioned that they see little reason to participate in the wider community of Regina to which they belong. Although this report does not attempt to delve deeply into the reasons for the snapshot that has emerged from this report, the snapshot itself should be sufficient – not to mention the countless other measures of the plight of Aboriginal citizens living in Canada's cities – to underline the need for the development and implementation of more, and effective, policies and initiatives aimed at helping Aboriginal children and their families to enjoy a way of life that has become the Canadian norm.

---

[61] The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth* (The Centre for Excellence for Child and Youth Centred Prairie Communities Regina Nov. 2002, p. 48).

[62] McGovern, K., *Building on Our Strengths*, Final Report Prepared for United Way of Regina and the Regina Regional Intersectoral Committee, December 6, 2002

BIBLIOGRAPHY

Campaign 2000, *Honouring Our Promises. Meeting the Challenges to End Child and Family Poverty*, 2003 Report Card on Child Poverty in Canada.

Farris-Manning, Cheryl and Zandstra, Marietta, *Children in Care in Canada: A summary of current issues and trends with recommendations for future research*, Foster LIFE Inc., 2002.

Federation of Saskatchewan Indian Nations, *A Research Report on The Schooling, Workforce and Income Status of First Nations Persons in Saskatchewan*, January 2002.

Health Canada, *A Statistical Profile of the Health of First Nations in Canada*, NW 2003.

Hunter, Garson and Douglas, Fiona, *Saskatchewan Child Poverty Report*, Social Policy Research Unit, Faculty of Social Work, University of Regina, November 2003.

Lee, Kevin K., *Urban Poverty in Canada: A Statistical Profile*, Canadian Council on Social Development, April 2000.

McGovern, Katherine, *Building on Our Strengths*, Final Report Prepared for United Way of Regina and the Regina Regional Intersectoral Committee, December 6, 2002.

North Central Family Centre, Regina, January 2004.

Parnes, Jeremy, *Report on the Community Vision and Action Plan*, North Central Community Partnership, May 2003.

Regina and District Food Bank Inc., January 2004.

Regina Qu'Appelle Health Region, *Improving First Nations and Métis Health Outcomes: A Call to Collaborative Action*, 2003.

Saskatchewan Community Resources and Employment, January 2004.

Saskatchewan Education, *Aboriginal Education Initiatives in Saskatchewan Education*, March 2000.

Saskatchewan Education, *Saskatchewan Education Indicators* 2000.

Saskatchewan Instructional Development and Research Unit, *Regina's Hidden Youth: Final Report*, University of Regina, 1999.

Saskatchewan Learning, *Building Partnerships: First Nations and Métis Peoples and the Provincial Education System* (Fall 2003).

Socialization, Communication, and Education Program Centre, January 2004.

Sofia House, Regina, January 2004.

Statistics Canada, *2001 Census, Aboriginal Peoples of Canada*.

Statistics Canada, *Aboriginal Peoples Survey*, 2001.

Statistics Canada, *2001 Census, 2001 Aboriginal Population Profile*.

Statistics Canada, *2001 Census, 2001 Community Profiles*.

Statistics Canada, *2001 Census, Profile of the Canadian population by age and sex: Canada Ages*.

The Council on Social Development Regina, Inc., *A Focus on Regina's Children and Youth*, The Centre for Excellence for Child and Youth Centred Prairie Communities – Regina Site, 2002.

The Standing Senate Committee on Aboriginal Peoples, *Urban Aboriginal Youth: An Action Plan for Change*, Final Report, October 2003.

Ungar, Linda, *Chili for Children serves 27,000 meals a year*, Saskatchewan Sage, June 2000.

APPENDIX A

INDICATORS OF ABORIGINAL CHILDREN AND YOUTH WELL-BEING

Indicator	Baseline	Year
Aboriginal children as a percentage of all children in foster care in Saskatchewan	**67%**	**March 1999**
Incidence of poverty among First Nations children ages 0-14 in Regina	**61.3%**	**2000**
Incidence of poverty among Métis children ages 0-14 in Regina	**45.7%**	**2000**
Aboriginal children as a percentage of all children residing with their caregivers in Regina's 3 transition houses	**73.9%**	**2002-03**
Aboriginal children as a percentage of all children passing through Sofia House in Regina	**50%**	**2002-03**
Aboriginal children as a percentage of all children being treated by Regina's SCEP Centre for significant to severe social, emotional and behavioural difficulties	**59%**	**September 2002 – June 2003**
Percentage of Aboriginal students in Saskatchewan graduating grades 10-12 after entry in Grade 10 in 1998-99 completing high school in a 3-year period	**41.9%**	**2001-02**
New enrolment of Aboriginal students in community schools in Saskatchewan as a percentage of all Aboriginal students enrolled at the beginning of the school year	**50.4%**	**1999-00**
Percentage of Aboriginal students dropping out of community schools in Saskatchewan as a percentage of all Aboriginal students enrolled at the beginning of the school year	**43.6%**	**1999-00**
Aboriginal teachers in Saskatchewan	**266**	**1998-99**
Aboriginal teachers in Saskatchewan as a percentage of:		**1998-99**
1. all teachers	**6.5%**	
2. all students	**0.4%**	
3. all Aboriginal students	**1.9%**	
Aboriginal student enrolment in Saskatchewan	**14.085**	**1998-99**
Aboriginal students enrolled in Saskatchewan as a percentage of all students	**20.4%**	**1998-99**

SECTION 11:

THE HOUSE OF JUSTICE: A SINGLE TRIAL COURT

2003

GERALD T.G. SENIUK*
JOHN BORROWS**

1. INTRODUCTION

The purpose of this article is to outline for discussion purposes the concept of a *House of Justice*: a single one-stop court system where citizens can seek individual justice, dispute resolution, reconciliation and community healing in an efficient and accessible forum. A *House of Justice* would institutionally knit our country together by both implementing the vision of the judicature provisions at the time of Confederation[1] and strengthening the ability of the provinces and Aboriginal[2] communities to pursue justice according to their communal values. This concept does not envision a merger of the Provincial Court into the existing Superior Court model with downloading to a "lower" separate court.[3] It contemplates the creation of a strong unified court where judicial functions are clearly demarcated and judicial impartiality and independence are fully protected by judges exercising sole control over "those matters which bear directly and immediately on the exercise of the judicial function".[4]

[*] Provincial Court, Regina, Saskatchewan.

[**] University of Victoria, Faculty of Law, Victoria, British Columbia.

[1] This is achieved through the appointment process, whereby the federal government appoints only from members of the bar where the court is located. Peter Russell has elaborated on this unique characteristic in various writings. See for example P.H. Russell, *The Judiciary in Canada: The Third Branch of Government* (Toronto: McGraw-Hill Ryerson, 1987), pp. 49-50:

> Comparatively speaking, the Canadian judicial system ranks as one of the most integrated, or least federalized. The judicial provisions of the Canadian Constitution lean strongly in the direction of the judicial system of a unitary state . . . The only judicial arrangements specifically provided for in the Constitution are the very essence of an integrated federal provincial system: federally appointment judges of provincial superior and intermediate courts. No other federation has this element of judicial integration.

Also see P.H. Russell, "Constitutional Reform of the Judicial Branch: Symbolic vs. Operational Consideration" (1984), 17 Canadian Journal of Political Science 225 at p. 246: "The key to this high degree of integration has been the provision in section 96 for federal government appointments of the judges of the higher provincial courts. In a quite unnoticed way, this constitutional provision has contributed to the building of a Canadian political community by removing any fears of parochial justice."

[2] The federal/provincial constitutional integration outlined in footnote 1 conceptually could be extended to indigenous communities as their constitutional situation becomes more clarified. See infra, footnote 21 for two such examples: the Cree Court Party in Saskatchewan and the Tsuu T'ina First Nations Peacemaker Court in Alberta. There are various innovations in the Yukon and Northwest Territories utilizing the Justice of the Peace office to provide integration. Something less than a separate justice system might satisfy aboriginal self-government initiatives. See for example Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), pp. 208-209. Cairns contrasts the *Report of the Royal Commission on Aboriginal Peoples* (RCAP), which is based on "arguments that stress self-government and minimize citizenship connection with the majority society", and the position of the Federation of Saskatchewan Indian Nations (FSIN). Cairns says the FSIN position in a published monograph

> without explicitly saying so . . . argues a counter-position to the RCAP *Report* . . . Its focus is the common future of all the people in Saskatchewan. Explicit, enhanced positive participation in normal provincial politics is a goal. There is no suggestion of a two-row wampum of separate paths. The goal of Aboriginal peoples is "nothing less than to re-invent Saskatchewan". The then chief of the FSIN, Blaine C. Favel, refers to the "common futures" of Aboriginal and non-Aboriginal peoples . . . The FSIN report is not advocating assimilation, or rejecting self-government, or sacrificing Indianness on the altar of modernization . . . The explicit, guiding premise is that only by becoming fully involved in the Saskatchewan community will Aboriginal peoples become part of the province-wide "we" community and thus have the moral levers to engage the majority as fellow citizens in tackling poverty and social malaise. The premise is that a common citizenship is the source of empathy.

See also John Borrows, "Landed Citizenship: Narratives of Aboriginal Political Participation" in Will Kymlicka, ed., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000).

[3] We experienced that process 15 years ago, when the County and District Courts merged into the existing Superior Courts in each province. At the same time there was downloading to the then Magistrates' Courts, beginning a process that eventually transformed "local magistrate's courts, once the dispersed third level of trial courts often staffed by lay judges, into province-wide systems of trial courts with increasingly significant statutory jurisdiction". See C. Baar, *One Trial Court: Possibilities and Limitations* (Ottawa: Canadian Judicial Council, 1991), p. 5. The jurisdiction of the Provincial Court steadily increased to the point that the Provincial Court has "more extensive jurisdiction than any court of limited jurisdiction in the United States, the United Kingdom or Australia [and] handles an increasingly higher proportion of serious criminal matters". See C. Baar, "Judicial Independence and Judicial Administration: The Case of Provincial Court Judges" (1998), 9 Constitutional Forum 114 at p. 120. The result has been an unfortunate stress within the existing two-tiered court structure that is difficult to address, as J.S. Ziegel pointed out in "The Supreme Court Radicalizes Judicial Compensation" (1998), 9 Constitutional Forum 31 at p. 40: "Perhaps there is no effective answer because of the constitutional anomaly of provincially appointed judges carrying the bulk of the burden of enforcing federally enacted criminal laws while having to settle for provincially created and administered compensation packages." In our opinion, the concept of *The House of Justice* would avoid this "merger/downloading" cycle for the future.

[4] In *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 at para. 258, 118 C.C.C. (3d) 193, 150 D.L.R. (4th) 577, *sub nom. Reference re: Provincial Court Act and Public Sector Pay Reduction Act (P.E.I.)*, s. 10, supp. reasons [1998] 1 S.C.R. 3, 121 C.C.C. (3d) 474, 155 D.L.R. (4th) 1, motion for directions refused July 9, 1998, motion to extend period of suspension granted [1998] 2 S.C.R. 443, Chief Justice Lamer reiterated and further developed those matters over which courts have administrative independence, identified previously in *R. v. Valente*, [1985] 2 S.C.R. 673, 23 C.C.C. (3d) 193, 49 C.R. (3d) 97. Issues that only judges can perform relate to "those matters which bear directly and immediately on the exercise of the judicial function". Examples of these matters include: "the assignment of judges, sittings of the court and court lists, the allocation of courtrooms, and the direction of administrative staff in carrying out these functions".

However, the concept of a *House of Justice* also envisions a system that would not be as insulated from the community, or as separated from other non-judicial justice functions as has traditionally been the case. For example, we believe that the office of the Justice of the Peace within a *House of Justice* could perform many essential non-judicial functions of the court and provide an important institutional link with the community. To accomplish these purposes it is vital that the function and office of the Justice of the Peace be closely associated with the judicial office of the court, so that both are fully integrated into the *House of Justice*. Such integration would help avoid the redevelopment of a separate lower-level court, and thereby prevent the recreation of the current two-tiered structure. In addition, by integrating the office of the Justice of the Peace with the court, the *House of Justice* could be institutionally linked to the community in a meaningful way without jeopardizing the independence of the judges of the court. If political will and judicial co-operation exist,[5] then such a *House of Justice* is achievable within the existing constitutional framework.[6]

2. THE CONCEPT

In the *House of Justice* concept, there would be in each province one Court of Appeal[7] whose judges are federally appointed. In addition, there would be one trial court in each province[8] to replace the current fragmented court system.[9] Judges in the single trial court[10] would be federally appointed in co-operation[11] with the province[12] or, where self-government applies, the Aboriginal community.[13] There would be specialized divisions within the Court.[14] Merger of fragmented court offices under one court structure would provide rural areas[15] with a fuller range of more easily accessible court administrative services. In addition, citizens would find within the court structure other justice-related resources, such as mediation/alternate dispute resolution, witness and victim services, public legal education resources, restorative justice and diversion processes. The integration of these services into an all-purpose *House of Justice* would not require the recreation of these programs, merely their coordination within one centralized body. Such a development would render court procedures and outcomes more transparent and comprehensible to the average citizen. It would further enhance access to justice by placing these services on a firmer institutional footing.[16] The creation of a *House of Justice* would rationalize and demystify the courts by establishing a one-stop location where citizens attend and choose from or are streamed within the panoply of services.[17] In short, users would find the court structure to be a more accessible, responsive and helpful place.

---

[5] Previously, when a national political will did exist, judicial and Canadian Bar Association opposition stalled the process. See Baar, *One Trial Court*, *supra*, footnote 3, at p. 12: "After June 1990 ... provincial attorneys general endorsed in principle complete unification of the trial courts ... Complete unification ... eliminating the two levels of trial courts and with them the distinction between federally appointed and provincially appointed judges." and Baar, "Judicial Independence" *supra*, footnote 3, at p. 114: "The proposal has been ... opposed by section 96 judges, not only through their national association (the Canadian Judges Conference) but also by the Canadian Judicial Council (which has no representation from chief judges appointed by provincial governments) and the Canadian Bar Association." and p. 117: "Later, the [New Brunswick] government tried to unify criminal matters in the Court of Queen's Bench, and had the support of the Q.B. Chief Justice. Those efforts were derailed after then federal Justice Minister Alan Rock's unprecedented undertaking that federal authorization (by amending the *Judges Act*) would require superior court and provincial bar endorsement of the proposal."

[6] See the Law Reform Commission of Canada, *Toward a Unified Criminal Court*, Working Paper No. 59 (Ottawa, 1989) at pp. 35-38 for a discussion about the constitutional issues surrounding the appointment process. We are not suggesting that there are not many complexities and considerations that would have to be addressed. However, if there were a will and a cooperative spirit, these legal, technical and practical issues could be resolved. This article is broad and conceptual, but others have explored some of these more concrete concerns. It is especially instructive to see the experience in other jurisdictions that are embracing unification, such as California, or seriously exploring the option, such as the United Kingdom. The enduring flexibility of the Canadian justice system is evident in such Provincial Court innovations as the Cree Court Party and the Tsuu T'ina First Nations Peacemaker Court. See *infra*, footnote 21.

[7] The Court of Appeal would continue some of the important constitutional roles of the central courts of London, while others would remain with the trial court. See W.R. Lederman, "The Independence of the Judiciary" (1956), 34 Can. Bar Rev. 769 at pp. 1167-68, who located the definition of a Canadian superior court from within the history of the central courts of London. Some of the functions of the old central courts of London are now performed by the various Courts of Appeal 5 ... 48 C.L.Q. (which did not exist in 1701) and not by the superior trial courts. It is necessary that those types of functions ... for example, bringing consistency to disparate trial court rulings and to the law ... remain with a collegial body that is relatively centralized and not diluted numerically. At this level there is a concern about "uploading". But with many of the other superior court functions that remain with the trial courts the concern is more about accessibility and less about decentralization or numerical dilution. At this level, numerical strength is necessary to ensure the caseload can be handled and to avoid "downloading".

[8] Because of the appointment process, this would be a national court of the kind Russell argues was envisioned in the Constitution and which the present bifurcated system is not. See *infra*, footnote 25.

[9] On the bifurcation between the federally appointed courts and the provincially appointed courts, as well as the danger of further fragmentation with the developing Justice of the Peace Courts, see: Gerald Senniuk and Noel Lyon, "The Supreme Court of Canada and the Provincial Court in Canada" (2000), 79 Can. Bar Rev. 77 (S.C.) at pp. 80-97.

[10] The legislative template for such a court exists in Nunavut. There is some suggestion that a model that might work in a large territory with a small, dispersed population, such as Nunavut, is not applicable to other Canadian jurisdictions. However, the legislative template is a foundation to build upon. Other large urbanized jurisdictions, such as California, have unified structures.

[11] See the Law Reform Commission of Canada, *Toward a Unified Criminal Court*, *supra*, footnote 6, at pp. 35-38 for a discussion about the constitutional issues surrounding the appointment process. But see *infra*, footnote 25 for Peter Russell's support for Bill Lederman's appointment process, and the national judiciary it would foster.

To facilitate the objective of enhancing accessibility, communities would be linked to the court structure through their community justice committees and the court's office of the Justice of the Peace (JP). At the same time, to ensure the integrity of the judicial office, judges of the court would be of equal status and would exclusively do the work of the *court*.[18] Other legal officers, such as Justices of the Peace, would be lay officials and not members of the bar.[19] They would generally be resident in their community, but integrated with the court structure in a close relationship. Within this framework there would be a variety of JP levels and functions,[20] but a key role for some would be as chair of their community's justice committee. This would ensure that local justice issues received appropriate attention from knowledgeable persons skilled in community dispute resolution. They would facilitate restorative initiatives, supervise diversion programs and develop appropriate local mechanisms for dialogue about community and court concerns. Since communities would generate their own ideas as they address these issues, it is not possible to specify how these court/community linkages would develop. However, existing examples reveal the effective-ness and creativity that can develop

[12] The creation of a Provincial Court such as the Cour du Québec, and the appointment of judges to it has been an important feature of province building. Although the unified court would be seen as a national court, it would be necessary to keep the provincial involvement in the appointment process as a result of this history. In this way, a joint appointment or a commission process (see *infra*, footnote 25) would strengthen the national and provincial identity of the judicature. The court structure would be an important weld of the Canadian confederation.

[13] As Treaty Federalism and the justice concepts in self government are developing, it is not possible to say how these specific appointments would fit into the one court structure. But the structure would allow for specialization, and these appointments may reflect this. See Sakej Henderson, "Empowering Treaty Federalism" (1997), 35 U. Alta. L. Rev.; James (sakej) Youngblood Henderson, "Implementing Treaty Order" in R. Gosse, J. Henderson and R. Carter, eds., *Continuing Poundmaker and Riel's Quest* (Saskatoon: Purich Publishing, 1994).

[14] Examples of traditional specialties include Criminal, Civil and Family. Examples of new divisions may include Aboriginal, Treaty or Constitutional. Although judges would generally remain in their specialized division, the Chief Justice would have the authority, with perhaps some limitation of transfer into some specialized courts, to reassign judges in the interests of the administration of justice or the court.

[15] See *supra*, footnote 3 on the experience of the merger of the County and District Courts with the Superior Courts. One enduring aspect of the merger was to decentralize the Superior Court in some jurisdictions, and to provide more communities with local access to the Superior Court judge where before there had been a resident District Court Judge. The more accessible reach of the Provincial Court administration would now provide more citizen access to Superior Court services.

[16] A *House of Justice* would place many community justice services on such a firmer footing. These services would gain greater legal credibility under judicial oversight and would enjoy enhanced efficiencies by reducing duplication and increasing productivity through their closer ties to the panoply of justice delivery services. They would also benefit from an increase in people's general knowledge of the services.

[17] The analogy would be to someone going to a large urban hospital for medical aid, where the profession puts the patient in touch with the appropriate specialty treatment.

[18] See *supra*, footnote 4 for the importance of the concept of an independent court.

[19] One of the reasons for suggesting only lay Justices of the Peace is the desire to avoid downloading and recreation of the current two-tiered structure. See *supra*, footnote 3.

[20] Many of these functions would assist courts with their workload. Examples are dealing with appropriate summary offence matters and community bylaws. Some of these would begin the development of separate justice systems in Aboriginal communities, which, since the office would be fully integrated with the court, would be separate but integrated. In such cases, the Justice of the Peace appointment may require federal input.

when the justice system becomes responsive to community concerns.[21] Synergistically working together as one *House of Justice*, these resources would enhance citizen and community participation in the pursuit of justice and link the court to justice's communal roots.

All of the resources discussed above currently exist, but are fragmented and scattered within our communities, serving some-times to frustrate and confuse rather than to help and to heal. Bringing them together requires political will and judicial co-operation. Although consolidation of initiatives such as those outlined above is a means to improving the administration of justice, one would also expect efficiencies and cost savings to result. Thus, each addition to the court structure may result in reduced, not added, cost.

3. DISCUSSION

At many levels, it should be unnecessary to argue for a single trial court. The onus is more properly upon those who would seek to restrain reform by maintaining the status quo with its bifurcated system. This is because the current approach is largely incompatible with the system of federalism adopted by Canada's founders.[22] As Peter Russell has pointed out, the Canadian constitution, unlike most other federal systems, was premised on the vision of an integrated judicial system.[23] This was done in order to tightly knit the country together through the harmonization of legal practice and principles at all levels.[24] As Russell points out, however, there has been a tragic incremental move away from an integrated system to a bifurcated system. As he observed:[25]

> "The tragedy is that the politicians who have operated the system have had neither the will nor the vision to work together to enable Canadians to realize the full benefits of this system . . . There has been no coherent or intelligent plan guiding the evolution of this trial court system . . . The dual system of trial courts that evolved in Canada has not been based on the logic of federalism."

An integrated judicial system is an important mechanism in shoring up national standards in a federal system.[26] It also strengthens the country by protecting provincial and local political units and enabling them to function within a context of the broader political community.[27] Russell questions the constitutionality of the status quo because it fails to live up to its potential. He notes that continuing such a dualistic system has "very bad practical implications for litigants and taxpayers [and] is a barrier to the efficient deployment of physical and human resources and to the coherent management of the trial court system".[28]

---

[21] The Yukon and the Northwest Territories have a long history of integrating resident Justices of the Peace with the workings of the court. In addition, there are examples of innovations within the court itself to develop deeper connections. For example, in Saskatchewan the Cree Court Party, presided over by The Honourable Judge Gerald Morin of the Provincial Court of Saskatchewan, began its first sittings in October 2001. The court sits in Cree-speaking communities, and persons appearing before the court can conduct their matters in the Cree language. The judge, legal aid lawyer, prosecutor, clerk, probation officer and native court worker all speak Cree. Proceedings can be translated for those who are non-Cree speaking. The process is analogous to providing French-language trials in Saskatchewan. The court can also conduct its affairs in English.

In Alberta, The Honourable Judge L.S. Mandamin of the Alberta Provincial Court presides over the Tsuu T'ina First Nations Peacemaker Court on the Tsuu T'ina Nation on the outskirts of southwest Calgary. The court, which began in October 2000, is integrated with the Provincial Court, and also with the community and its justice traditions. Judge Mandamin fulfilled the requirement of a judge who was "a highly qualified member of the First Nations Bar who ordinarily qualifies for the Bench and who has demonstrated an ability to bridge the cultural divide between the Euro-Canadian legal system and the First Nations Community". The court clerks are recruited from the community. Tsuu Sina/Stoney Corrections Society provides the court worker and probation services. In addition, two Peacemakers who are elders also sit in court as community witnesses to the proceedings. The Peacemaker coordinator calls on Peacemakers from the community who hold the trust and respect of the community. See *supra* footnote 36 on the Peacemaker concept and role.

[22] Peter Hogg, "Federalism and the Jurisdiction of Canadian Courts" (1981), 30 U.N.B. L.J. 9.

[23] *Supra*, footnote 1, at pp. 49-53.

[24] Peter Hogg, *Constitutional Law of Canada* (Scarborough: Carswell, 2000), p. 175.

[25] Peter Russell, "Evolution of Canada's Trial Court System From Confederation to Today" (paper presented at the Trial Courts of the Future Symposium, Saskatoon, May 15-17, 2002), at pp. 1-2.

[26] *R. v. Thomas Fuller Construction Co. (1958) Ltd.*, [1980] 1 S.C.R. 695, 106 D.L.R. (3d) 193, 12 C.P.C. 248; *Canada (Attorney General) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at p. 327, 137 D.L.R. (3d) 1, [1982] 5 W.W.R. 289; *Ontario (Attorney General) v. Pembina Exploration Canada Ltd.*, [1989] 1 S.C.R. 206 at pp. 215 and 225-26, 57 D.L.R. (4th) 710, 33 O.A.C. 321 *sub nom. Siddall (William) & Sons Fisheries v. Pembina Exploration Canada Ltd.*; *Hunt v. T & N plc*, [1993] 4 S.C.R. 289, 109 D.L.R. (4th) 16, [1994] 1 W.W.R. 129.

[27] *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 at p. 1099, 76 D.L.R. (4th) 256, [1991] 2 W.W.R. 217.

Furthermore, Russell has suggested a new appointment process that would[29]

> make it possible for Canadians to have disputes about their legal rights and duties — disputes which they do not perceive as falling into purely federal or provincial categories — adjudicated at conveniently located centres by judges who, while they may be specialists in some particular area of law, are all highly skilled professionals and not segregated into groups of 'superior' federal appointees and 'inferior' provincial appointees.

This, he says, would comply with the likely intent behind Canadian federalism to have a national judiciary.[30]

As important as it is to properly address the possible constitutional deficiencies of the bifurcated system, we believe that a discussion of an integrated vision of the court system should not be limited to a discussion of unification of the federally and provincially appointed courts. If we instead conceptualize a *House of Justice*, there would be room to consider the integration of other constitutionally recognized communities that extend beyond the federal/provincial/territorial restrictions. For example, we believe that the treaty nations of Saskatchewan could participate in a unified court structure that would be an all-purpose *House of Justice* within the province.[31] Within a unified *House of Justice* indigenous peoples could exercise their own inherent powers of adjudication within their communities, and could draw on existing resources through such an institution. They could apply indigenous and non-indigenous law in an inter-societal context, drawing upon the best of both legal worlds as they strive to create conditions facilitative of peace and order. In an urban setting this would be a welcome development because it would provide indigenous people with a forum that is more attentive to their concerns, as the *House of Justice* could have many different options available within it to pursue the resolution of disputes. There could be functions for peacekeepers, elders, mediation, adjudication and justices of the peace.

In a reserve setting a *House of Justice*, as part of a unified court structure, could solely apply the laws of the treaty nation of which it was a part. Such courts could function akin to Tribal Courts in the United States, only the *Houses of Justice* proposed here would take their fiscal resources from the state and be part of a larger juridical structure. This could overcome a huge problem Tribal Courts in the United States face, in that they perpetually lack finances and respect from other levels of courts throughout the country. It would also ensure that these institutions functioned with the necessary independence from Band chiefs and councils. If a *House of Justice* Tribal Court Division was part of a larger unified court structure in the province that amalgamated provincial and superior courts, diversified its functions and was attentive to indigenous justice issues, this could go some distance toward implementing the peace and order promises under the treaties.[12] In connection with concerns that Tribal Courts could be over-whelmed by non-indigenous law, there could be ways devised to shield some of the decisions in these Houses of Justice from culturally inappropriate judicial review, where people are still protected in their due process rights. There could be an appeal structure within such a *House of Justice* that tests decisions of Tribal Judges before a body of their peers, before review travels on up the line. Having Tribal Courts in Saskatchewan that function in furtherance of the treaty relationship would be a very significant development. The fact that they would flow from the treaties, and draw their sources from indigenous and non-indigenous legal principles, could be a source of great strength to these institutions.

---

[28] *Supra*, footnote 25: "To the layman it would seem obvious that jurisdiction to conduct trials for offences subject to life imprisonment is surely the responsibility of a 'superior court' if that phrase has any common sense meaning. If so, than at least a part of what provincial and territorial inferior courts are doing in Canada today is unconstitutional."

[29] Russell, "Constitutional Reform", *supra*, footnote 1, at p. 251.

[30] See Seniuk and Lyon, *supra*, footnote 9, at p. 118. Referring to the writings of W. R. Lederman and P.W. Hogg, Russell argued that a nominating commission with members from both levels of government, from both opposition and government benches, and with lay members and members of the Bar would "produce a much more pluralistic basis for judicial recruitment and a check on unjustifiable patronage appointments". If the judges were chosen from such a commission process, then Russell states that regardless of whether the federal or provincial governments made the appointment, "This judiciary, a truly national judiciary, would be one which both levels of government could confidently entrust with the application of their laws and one which would command the respect of the citizenry which both levels of government serve." We agree and suggest that this concept could be extended to appointments involving First Nations.

[31] See *supra*, footnote 2.

But the value of the *House of Justice* in integrating community values is not limited to First Nations.[13] It applies to all communities. The reason such a *House of Justice* should be able to respond to any community's justice concerns is because it would be linked to the community. If the community's desire for security and fairness is the wellspring of justice, then the court must be rooted in the community or it will wither. And without healthy courts, communities cannot achieve justice. This proposed model aims at more closely integrating the court and the community with each other and better coordinating their joint efforts. A key to such a link is the resident Justice of the Peace.

Justice is holistic, and fragmentation at any level is contrary to the public interest and to the best administration of justice. We should not attempt to unify at the trial court level while further fragmenting and downloading at the local level. We should think of different levels of Justice of the Peace offices that would perform diverse functions. However, all of the offices of the Justice of the Peace should be integrated within a single trial court as an integral part of the *House of Justice*. Through one level of the Justice of the Peace office, we should proactively explore our court/community relationships. Through the office of the Justice of the Peace, the *House of Justice* can remain rooted in the community and keep the court linked to the community while at the same time maintaining the necessary distance required for impartial and independent tribunals. Such projects should not require any new funding or legislation, but they would require that we work together differently so as to reflect the holistic and shared nature of justice.

The analogy between "health" and "justice" can provide a framework for discussion purposes. Community experiences of insecurity or unfairness may be viewed as symptoms of social ills in need of diagnosis and treatment. Disharmony and discord may be indicators of shared sicknesses requiring remedy and rehabilitation. What if we thought of courts as the "hospitals" of a justice system whose goal was to restore security and fairness in the community? What if we thought of them as being analogous to "healing lodges", whose objective is to re-establish peace and order with all our relations? Instead of searching through a fragmented system, people could enter through one door and find a variety of rooms and specialized services. Instead of stumbling from one institution to the next, people could confidently approach a single body for a range of ceremonies that lead to healing. Such a court system of the future would be integrated, accessible, flexible and efficient. It would be characterized by principles of peace, friendship and respect, consistent with a treaty relationship and

[12] The peace and order clauses in the Saskatchewan treaties read as follows:

> The undersigned chiefs, on their behalf and on behalf of all other Indians inhabiting the tract within ceded do hereby solemnly promise and engage to strictly observe this treaty and also to conduct and behave themselves as good and loyal subjects of Her Majesty The Queen. They promise and engage that *they will in all respects obey and abide by the law; that they will maintain peace and order between each other, and also between themselves and other tribes of Indians or whites,* now inhabiting or hereafter to inhabit any part of the said tract, or that they will not molest a person or property of any inhabitants of such ceded tract or the property of Her Majesty The Queen, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and *that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Aboriginal offending against the stipulations of this treaty or infringe the laws in force in the country so ceded.*

For further commentary on Saskatchewan treaties see Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is that Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000); Arthur Ray, J.R. Miller and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* Montreal: McGill-Queen's Press, 2000); Judge David Arnot, "Treaties as a Bridge to the Future" (2001), 50 U.N.B. L.J. 57 at p. 59.

[13] Though there are constitutional considerations that suggest that, at a minimum, aboriginal peoples' community values should be integrated with the administration of justice.

in accordance with the highest principles underlying the rule of law.[34] A court is not only a building, but should also be a system of people working together in an integrated and helpful fashion. In such a system, there is no buck-passing. It is a one-stop place of assistance, referral and coordination.

The link between the court and the community should pivot around a Justice of the Peace or Peacemaker who is resident in the community. This person should either head or be part of a community justice committee, and should also have close working relationships with the local police and other local justice leaders. Simultaneously, the JP should be in close association with the judge presiding in that area. There should be a variety of levels of Justices of the Peace — some that are limited to administrative powers and may work under the direction of a judge, and others who perform judge-like functions and who may work independently under the assignment of the judge. But primarily these should be "good news" JPs,[35] ones who perform a role like the Peacemaker[36] and can coordinate diversion pre- or post-charge. The same administrative office would support the judge and the JP.

4. CONCLUSION

This proposal aims at integrating or coordinating all aspects of the justice system's resources and responses. Because the court is a place of transparency, accountability and public record, the court should be involved from the start to the finish to ensure justice is done, in process and substance. The court is not only the accessible and coordinated entry to services and resources, it is also the window through which the general community can observe the results achieved by these services and resources. It is here that the justice system is transparent and accountable. This should be the place of record for pre-charge diversion and post-sentence treatment where the community can see what was expected of the offender and what was achieved in the end. This place, the *House of Justice*, is where the parties in conflict, the community, the court and the resource providers are held accountable to each other and to the public.

[34] For a discussion of these principles see John Borrows, "Wampum at Niagara: First Nations Self-Government and the Royal Proclamation" in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (Vancouver: U.B.C. Press, 1997), p. 155.

[35] This especially can be helpful in isolated communities whose residents typically travel long distances to the regular court locations.

Judges intuitively understand the utility of having the functions of a Justice of the Peace integrated with the court and, in our experience, many judges are willing to work to develop such an integrated concept. The following is from a judge with the Provincial Court in Saskatchewan and is typical of the judicial response to this concept:

> I could not agree more about the need to involve J.P.'s to provide the link between the court and the community. Especially in areas like ours where many of the people we deal with are located significant distances from where they live, this link could provide such communities with an opportunity to be closer to the court and justice system and a greater chance that they could feel involved in the system and develop some sense of ownership of it. To the extent that I can be of any assistance to developing the use of these J.P.'s and helping them to do their jobs, I would be happy to assist in any way that I can.

Communities also recognize the utility of having this connection to the court. A reserve in Saskatchewan brought the following example to our attention. The court party which for occupational health reasons is not required to travel when the winter temperatures dip below -30 degrees Celsius, did not travel to its scheduled circuit point. However, many of the reserve residents traveled over icy, hilly back roads, where lives had been lost in the past, to get to court. As the chair of the reserve's justice committee pointed out, all of that hardship could have been avoided had they a resident Justice of the Peace that was integrated with the court.

[36] The Tsuu T'ina First Nations Peacemaker Court is a Provincial Court located on the Tsuu T'ina Nation on the outskirts of southwest Calgary, which handles regular Provincial Court matters as well as Tsuu T'ina bylaw charges. See supra, footnote 20. This information is taken from Judge Mandamin's paper, "Tsuu T'ina Court and Peacemaking Initiative", which was prepared for the Alberta Provincial Judges Education Seminar, Red Deer, Alberta, May 17, 2001.

> The peacemaker coordinator sits in court as a party and may address the Court when peacemaking is considered. Diversions to peacemaking may be initiated by Tsuu T'ina police, the Crown prosecutor, the peacemaker coordinator, the judge or community corrections workers. The individuals who chose peacemaking have their proceeding adjourned while they are in the peacemaking process. The peacemaker coordinator initiates the peacemaking process. He assesses each case to determine if peacemaking would be suitable. If it is, he accepts the matter into peacemaking and assigns a peacemaker or peacemakers to each case. The peacemakers are Tsuu T'ina members who hold the trust of the community. The Tsuu T'ina invited every household in the community to name those from their families and from the community generally who would be fair in peacemaking. From those nominated, approximately fifty individuals were identified. The first third of that group were given an orientation and training course in peacemaking. . . . The successful peacekeeping outcomes may involve withdrawal of charges by the Crown or incorporation of the peacekeeping healing plan into sentencing.

SECTION 12:

ADMINISTRATION OF JUSTICE AND HOW TO IMPROVE IT: APPLICABILITY AND USE OF INTERNATIONAL HUMAN RIGHTS NORMS

A PAPER SUBMITTED TO THE COMMISSION ON
FIRST NATIONS AND MÉTIS PEOPLES AND
JUSTICE REFORM

PAUL JOFFE AND WILLIE LITTLECHILD I.P.C.

JANUARY 21, 2004

EXECUTIVE SUMMARY

This paper examines whether international human rights norms relevant to Aboriginal peoples in Saskatchewan should be incorporated into the reforms for improving the administration of justice in the province. It concludes that use of these norms is wholly appropriate for this and other matters relating to First Nations and Métis peoples.

Root causes of crime emanate from a wide range of factors that unjustly impact on Aboriginal peoples. The criminal justice system cannot resolve these pressing problems alone. For example, such matters as colonialism, dispossession and racial discrimination, may be considered by some observers as external to the "administration" of justice. Yet they remain central in addressing questions of fairness, honour and justice itself.

In a democratic society, the administration of justice is "the primary guarantor of the protection of human rights." Moreover, the federal, provincial First Nations and Metis governments have a "duty to guarantee respect for human rights". In the context of Indigenous peoples, this requires the use of international human rights norms that reflect the perspectives and values of the peoples concerned. Application of such standards should also respect their legal status as distinct self-determining peoples and their fundamental collective human rights. This proposed approach would seek to ensure reforms that would "better reflect the values and inherent strengths of Aboriginal communities", as called for by the Commission's mandate.

In order to better reflect and reinforce Indigenous values and inherent strengths, it is suggested that it would be critical to ensure respect for both Aboriginal and treaty rights in any framework for the administration of justice. Clearly, human dignity and human rights are essential elements in any framework for ensuring equality, non-discrimination, fairness and justice for First Nations and Metis peoples in Saskatchewan and elsewhere in Canada.

The paper underlines that achieving these objectives is likely to be an ongoing challenge. It requires a human rights culture that is relevant to First Nations and Metis peoples to be entrenched in the administration of justice. It also requires a principled framework that is inclusive of First Nations and Metis peoples, communities and institutions – one that fully accommodates their essential roles in the achievement of a responsive and fair justice system. Effective implementation strategies and concrete measures will be necessary both in the short and longer term.

In ensuring a principled framework, a number of elements are outlined to the Commission. These include the following:

i) self-determination of Aboriginal peoples be a central element for all reforms;

ii) relevant international human rights norms be incorporated in all implementation strategies, with a view to uplifting existing standards;

iii) in relation to Aboriginal and treaty rights, human rights education programmes be devised to promote understanding and sensitize people both within and outside the justice system;

iv) Aboriginal peoples' concerns regarding their treaties and treaty rights be addressed through adequate processes. In addition, the sacred nature and historical and contemporary significance of treaties be an integral part of human rights education; and

v) consistent with the right of self-determination, the full and effective participation of the First Nations and Métis peoples be an integral element in any proposed reforms.

In order to formulate a principled framework that would incorporate the above elements in the overall reforms, it is suggested that a "rights-based" approach is essential.

TABLE OF CONTENTS

Introduction 1

I. Why International Human Rights Norms? 4

II. Applicability and Use of International Human Rights Norms in Canada 6

III. Importance of Adopting a Human Rights Approach 8

IV. Right of Self-Determination and s. 35 of the *Constitution Act, 1982* 12

V. Indigenous Peoples' Treaties — An International Concern 16

Conclusions and Recommendations. 23

List of Authorities. 29

ADMINISTRATION OF JUSTICE AND HOW TO IMPROVE IT: APPLICABILITY AND USE OF INTERNATIONAL HUMAN RIGHTS NORMS

INTRODUCTION

In regard to "administration of justice" considerations, the Saskatchewan *Commission on First Nations and Métis Peoples and Justice Reform* has a very far-ranging mandate.[1] In particular, the Commission is required to "identify efficient, effective and financially responsible reforms which would improve the administration of justice and would better reflect the values and inherent strengths of Aboriginal communities".[2]

This paper will address the applicability and use of international human rights norms, in the context of improving the administration of justice for First Nations and Métis Peoples. It would appear that constructive reforms would be essential both within and outside the justice system. To some extent, this point was highlighted by the Supreme Court of Canada in R. v. Gladue:[3]

> It is clear that sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system. The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people. It arises also from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders. There are many aspects of this sad situation which cannot be addressed in these reasons.[4]

Root causes of crime emanate from a wide range of factors that unjustly impact on Aboriginal peoples.[5] As the Commission's Interim Report in May 2002 highlights, the criminal justice system cannot resolve these pressing problems alone:

> In his 1994 report submitted to *The Royal Commission on Aboriginal Peoples*, Robert Mitchell, then Saskatchewan Minister of Justice and Attorney General for Saskatchewan wrote:
>
>> One of the complexities of dealing with justice reform for Aboriginal people is that high levels of Aboriginal conflict with the law are in many respects a reflection of wider structural inequities - social, economic and political. The latter beg for solutions which lie beyond the boundaries and mandate of the criminal justice system. To foist responsibility for the resolution of such problems upon the criminal justice system is to assure their continuance. Poverty, unemployment, poor health, family dysfunction, low levels of formal education, substance abuse - these are matters which warrant the attentions of government and civil society at all levels.[6]

---

[1] Commission on First Nations and Metis Peoples and Justice Reform, "Terms of Reference", available at http://www.justicereformcomm.sk.ca/terms.gov.

[2] *Id.*, at para. 2e.

[3] [1999] 1 S.C. R. 688.

[4] *Id.*, at para. 65.

[5] See, for example, P. Linn, *Report of the Saskatchewan Indian Justice Review Committee*, Saskatchewan Justice, Regina, 1992; and P. Linn, *Report of the Saskatchewan Metis Justice Review Committee*, Saskatchewan Justice, Regina, 1992. These earlier reports cautioned that a number of overarching concerns with direct impact on Aboriginal people and the criminal justice system needed to be addressed and reforms needed to be introduced to improve the social and economic circumstances of Aboriginal people of Saskatchewan. Otherwise, little would be accomplished by implementing the Committees' proposed recommendations. These points are highlighted in Commission on First Nations and Metis Peoples and Justice Reform, "Building on Success, Interim Report – May 30, 2002", Saskatchewan, at pp. 34-35.

[6] Quoted in Commission on First Nations and Metis Peoples and Justice Reform, "Building on Success, Interim Report – May 30, 2002", Saskatchewan, p. 38.

In the coming months, the Implementation Office will likely determine whether it will introduce and use uplifting international standards and, if so, whether such standards will be limited to the justice system or extend to much broader-based reforms. In respect to the administration of justice, there are a growing number of international human rights norms that could prove useful. These relate to such specific aspects as interpreters,[7] juveniles,[8] child prostitution,[9] treatment of prisoners,[10] non-custodial measures,[11] conduct of law enforcement officials,[12] role of lawyers[13] and prosecutors[14], restorative justice,[15] independence of the judiciary,[16] and victims of crime.[17]

As this paper will demonstrate, a compelling case can be made for the Government of Canada and the Saskatchewan government to utilize international human rights norms in a wide range of matters relating to First Nations and Metis peoples. Colonialism,[18] dispossession of lands and resources,[19] failure to honour Treaties and respect Treaty rights,[20] racism and discrimination,[21] forced assimilation,[22] and marginalization continue to have profound adverse impacts on First Nations and Metis peoples in Canada[23] and elsewhere around the globe.[24] Such larger unresolved issues significantly influence First Nations and Metis people within and outside the justice system. These matters may be considered by some observers as external to the "administration" of justice. Yet they remain central in addressing questions of fairness, honour and justice itself.

---

[7] *International Covenant on Civil and Political Rights*, G.A. Res 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316, Can. T.S. 1976 No. 47 (1966), Art. 14, para. 3(f), *entered into force* March 23, 1976; *Convention on the Rights of the Child*, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, Art. 40.2(b)(vi); *Indigenous and Tribal Peoples Convention, 1989*, I.L.O. Convention No. 169, I.L.O., 76th Sess., *reprinted in* (1989) 28 I.L.M. 1382, Art. 12; *United Nations Declaration on the Rights of Indigenous Peoples* (Draft), in U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/56, 28 October 1994, at 105-115, *reprinted in* (1995) 34 I.L.M. 541, Art. 14, para. 2.

[8] *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990); *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990); *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The "Beijing Rules")*, G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

[9] *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, G.A. res. 54/263, Annex II, U.N. GAOR Supp. (No. 49), U.N. Doc. A/54/49 (2000), entered into force January 18, 2002.

[10] *Standard Minimum Rules for the Treatment of Prisoners*, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); *Basic Principles for the Treatment of Prisoners*, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

[11] *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990).

[12] *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990); *Code of Conduct for Law Enforcement Officials*, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).

[13] *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

[14] *Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990).

[15] *Basic principles on the use of restorative justice programmes in criminal matters*, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000). "Restorative justice" is described in general terms by the Supreme Court of Canada as "an approach to remedying crime in which it is understood that all things are interrelated and that crime disrupts the harmony which existed prior to its occurrence, or at least which it is felt should exist. The appropriateness of a particular sanction is largely determined by the needs of the victims, and the community, as well as the offender": *R. v. Gladue*, [1999] 1 S.C. R. 688, at para. 71.

[16] *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

[17] *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. res. 40/34, annex, 40 U.N. GAOR Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985).

[18] R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, (Tokyo: United Nations Univ. Press, 1990), at 118:

> The subordination of indigenous peoples to the nation-state, their discrimination and marginalization, has historically, in most cases, been the result of colonization and colonialism. Within the framework of politically independent countries, the situation of indigenous and tribal peoples may be described in terms of internal colonialism.

[19] See, *e.g.*, Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, U.N. Doc. E/C.12/1/Add.31, 10 December 1998, para. 18:

> The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by the [Royal Commission on Aboriginal Peoples], and endorses the recommendations of the RCAP that policies which violate Aboriginal treaty obligations and extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party.

The following paper is not intended to be a comprehensive examination of the applicability and use of international norms within the domestic context of Saskatchewan or Canada. However, it will provide diverse reasons as to why international norms are highly relevant to First Nations and Metis peoples and the administration of justice. It will also elaborate on why such international considerations should be a significant part of far-ranging reforms.

In particular, the analysis will focus on a number of key elements:

i) Reasons for international human rights norms;

ii) applicability and use of international human rights norms in Canada;

iii) importance of adopting a human rights approach;

iv) significance of the human right of self-determination in the context of s. 35 of the *Constitution Act, 1982*[25]; and

v) Indigenous peoples' treaties as an international concern.

---

[20] See, *e.g.*, Vice-Chief John McDonald, Prince Albert Tribal Council and Denesuline First Nations, La Ronge, Saskatchewan, 28 May 1992, quoted in Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996), vol. 2(1), at p. 50:

> The sources of the under-development, poverty, disease and dependence within our First Nations can be found in the disregard and violation of our treaties and of Canada's own constitution. Likewise, the seeds of the solutions to the fundamental problems and contradictions can be found in the honouring and faithful implementation of these sacred treaty rights and obligations.

[21] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration, adopted in* Durban, South Africa, 8 September 2001, para. 14:

> We recognize that colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that … indigenous peoples were victims of colonialism and continue to be victims of its consequences. We acknowledge the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its reoccurrence prevented.

[22] See generally A. Armitage, *Comparing the Policy of Assimilation: Australia, Canada, and New Zealand* (Vancouver: University of British Columbia Press, 1995). See also Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(1), p. 89:

> … the *Indian Act* was intended to hasten the assimilation, civilization and eventual annihilation of Indian nations as distinct political, social and economic entities. It was not intended as a mechanism for embracing the Indian nations as partners in Confederation or fulfilling the responsibilities of the treaty relationship. Rather, it focused on containment and disempowerment not by accident or ignorance, but as a matter of conscious policy. The breaking up of Aboriginal and treaty nations into smaller and smaller units was a deliberate step toward assimilation of Aboriginal individuals into larger society.

[23] J. Tully, "The Struggles of Indigenous Peoples for and of Freedom" in D. Ivison, P. Patton, & W. Sanders, eds, *Political Theory and the Rights of Indigenous Peoples* (Cambridge/New York: Cambridge University Press, 2000) 36, at p. 39:

> The long-term effects of [the processes of internal colonisation] for the vast majority of native people in Canada has been to reduce formerly economically self-sufficient and interdependent native societies to tiny overcrowded reserves, inter-generational welfare dependency, sub-standard housing, diet, education and housing facilities, high levels of unemployment, low life expectancy, high rates of death at birth, and predictably, following these conditions on or off reserves that undermine their well-being and self-esteem, high levels of substance abuse, incarceration and suicide for native peoples.

[24] Colonial occupation and dispossession relating to Indigenous peoples' territories were not limited to the Americas but were, and often continue to be, worldwide phenomena. In regard to the highly discriminatory and questionable legal theories used by European states, see A. Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law" (1999) 40 Harv. Int'l L.J. 1.

[25] *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982*, (U.K.), 1982, c. 11.

I. WHY INTERNATIONAL HUMAN RIGHTS NORMS?

In relation to international human rights, the use of the term "norms" in this paper includes such international instruments as conventions, declarations, principles, guidelines and rules. The term also refers to relevant customary international law,[26] including *jus cogens* or peremptory norms.[27]

For example, the prohibition against racial discrimination is considered in international law to be a peremptory norm:

> The major distinguishing feature of such rules [i.e. peremptory norms] is their relative indelibility. They are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The least controversial examples of the class are the prohibition of the use of force, the law of genocide, *the principle of racial non-discrimination*, crimes against humanity, and the rules prohibiting trade in slaves and piracy.[28] [emphasis added]

Thus, the international peremptory norm prohibiting racial discrimination can serve to reinforce the importance of the same prohibition under the equality provisions of the *Canadian Charter of Rights and Freedoms*.[29] The prohibition against racial discrimination, equality and bias issues are, of course, key concerns in the administration of justice.[30]

In considering whether to use international human rights norms to improve the administration of justice, it is important to underline that States, such as Canada, have a duty to guarantee respect for human rights.[31] This guarantee[32] is provided in the two human rights Covenants,[33] as well as in other international instruments.[34]

---

[26] A. Aust, *Modern Treaty Law and Practice* (New York: Cambridge University Press, 2000), at p. 10: "Treaties and customs are the main sources of international law. Customary law is made up of two elements: (1) a general convergence in the practice of states from which one can extract a norm (standard of conduct), and (2) *opinio juris* – the belief by states that the norm is legally binding on them.

See also G. Slyz, "International Law in National Courts" in T.M. Franck & G.H. Fox, eds., *International Law Decisions in National Courts* (N.Y.: Transnational Publishers, 1996) 71 at pp. 71-72; and B. Simma & P. Alston, "The Sources of Human Rights Law: Custom, Jus Cogens and General Principles" (1992) 12 Aust. Y.B.I.L. 82.

[27] *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679 (1969), Art. 53: "A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole ... from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

[28] I. Brownlie, *Principles of Public International Law*, 5th ed. (Oxford: Clarendon Press, 1998), at p. 515.

[29] *Canadian Charter of Rights and Freedoms*, in *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982*, (U.K.), 1982, c. 11, Part I, s. 15. See also *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at 1056-1057, per Dickson C.J. for the majority:

> Canada's international human rights obligations should inform not only the interpretation of rights guaranteed by the *Charter* but also the interpretation of what can constitute pressing and substantial s. 1 objectives which may justify restrictions upon those rights. Furthermore, for purposes of this stage of the proportionality inquiry, the fact that a value has the status of an international human right, within customary international law or under a treaty to which Canada is a State Party, should generally be indicative of a high degree of importance attached to that objective.

[30] See, generally, Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: November 1998).

[31] The United Nations and member States also have a duty to promote universal respect for human rights. See, *e.g.*, L.B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 Am. Univ. L. Rev. 1, at pp. 13-14:

> This constitution of the world [i.e. Charter of the United Nations], the highest instrument in the intertwined hierarchy of international and domestic documents, prevails over all other treaties, and implicitly over all laws, anywhere in the world. ... [H]uman rights are of international concern, and ... the United Nations has the duty to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion." [Art. 55(c)] All members of the United Nations ... have pledged to "take joint and separate action," [Art. 56] in cooperation with the United Nations for the achievement of these great purposes.

Moreover, the duty to guarantee respect for human rights is explicitly applied to the administration of justice. As D. Garcia-Sayan explains:

> The issue of access to justice has been a long-standing concern, reflected in the latter part of the twentieth century by clear provisions concerning the State's so-called "duty to guarantee respect for human rights". This means viewing the administration of justice as a public service and access to it is a basic social right or, in other words, as "the primary human right in a legal system intended to guarantee both individual and collective rights"[35,36]

In the present era of increasing globalization, virtually every major issue in Canada is being addressed in at least some important respect at the international level. This growing trend serves to enhance the significance of international human rights norms for the Canadian domestic context.

As distinct international actors, First Nations and Metis peoples (or Indigenous peoples as they are referred to at the international level) are directly participating in human rights standard-setting processes at the United Nations and other international forums.[37] In particular, after many years of deliberation and preparation involving representatives of States, Indigenous peoples, and U.N. specialized agencies, a *U.N. Declaration on the Rights of Indigenous Peoples*[38] was adopted in 1993 by the Working Group on Indigenous Populations[39] in

---

[32] This guarantee has also been described as a State obligation to guarantee the enjoyment of human rights: see Committee on the Elimination of Racial Discrimination, *General Recommendation XX (48) concerning Non-discriminatory implementation of rights and freedoms (Article 5)*, 15 March 1996 (contained in document A/51/18), para. 1:

> Article 5 of the Convention contains the obligation of States Parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list.

[33] International Covenant on Civil and Political Rights, Art. 2:

> 1.Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

See also *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); Can. T.S. 1976 No. 46 (entered into force 3 January 1976, accession by Canada 19 May 1976), Art. 2.

[34] See, *e.g.*, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, U.N.G.A. Res. 53/144, U.N. Doc. A/RES/53/144, 8 March 1999, Annex, Art. 2:

> 1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
>
> 2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Canada and other American states are committed to "seek to promote and give effect to" this latter Declaration: see Summit of the Americas, 2001, *Plan of Action*, adopted at the Third Summit of the Americas, Quebec City, Canada, heading 2 (Human rights and fundamental freedoms).

[35] J. Mendez, "El acceso a la justicia: un enfoque desde los derechos humanos", *Acceso a la Justicia y Equidad: Estudio en Siete Países de America Latina*, Inter-American Institute of Human Rights/Inter-American Development Bank (San Jose, Costa Rica, 2000)

[36] D. Garcia-Sayan, *Strengthening the rule of law in building democratic societies: human rights in the administration of justice*, Seminar on the Interdependence Between Democracy and Human Rights, Organized by the Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002, p. 12, para. 26.

[37] R. Barsh, "Indigenous Peoples in the 1990s: From Object to Subject of International Law?", (1994) 7 Harvard Human Rts. J. 33, at p. 43:

> Several developments over the past ten years have signalled change in the legal personality of indigenous peoples. ...
>
> ... [I]ndigenous organizations have been participating in growing numbers in United Nations decisionmaking, and United Nations agencies have increased direct aid and technical support to indigenous communities. These developments can be seen in the implementation of ILO Convention 169, the results of the Rio Summit, activities taken for the Year, and plans for the Decade [regarding indigenous peoples], as well as program initiatives taken by the World Bank, the Organization of American States, and the European Community.

[38] *United Nations Declaration on the Rights of Indigenous Peoples* (Draft), in U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/56, 28 October 1994, at 105-115, *reprinted in* (1995) 34 I.L.M. 541.

[39] The creation of the Working Group on Indigenous Populations was proposed by the Sub Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981. The establishment of WGIP was endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982.

Geneva. In 1994, this U.N. Declaration was unanimously approved by the *U.N.* Sub-Commission[40] and forwarded to the U.N. Commission on Human Rights (UNCHR). Since 1995, the *U.N. Declaration* has been considered by an open-ended inter-sessional working group established by the UNCHR.[41] The intention is to submit a declaration for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People.[42]

In addition, in April 2001, the Commission on Human Rights decided to appoint, for a three-year period, a "special rapporteur on the situation of human rights and fundamental freedoms of indigenous people".[43] A major issue being examined by the Special Rapporteur in relation to Indigenous peoples is the administration of justice. We had the honour of hosting Dr. Stavenhagen in an unofficial meeting in Saskatoon on May 3, 2003. We also sent a Commission representative to a Regina conference that was a follow-up to the World Conference Against Racism with Special Rapporteur Rowena Roduta.

All of these developments demonstrate the importance of international human rights norms, especially in relation to Indigenous peoples. Both Canada[44] and the United States[45] recognize generally that domestic and foreign policy are profoundly interrelated and existing distinctions are increasingly blurred.

In light of the significance of international human rights norms, their applicability and use in Canada are examined briefly below.

II. APPLICABILITY AND USE OF INTERNATIONAL HUMAN RIGHTS NORMS IN CANADA

In regard to the applicability and use of international human rights norms in Canada, there are two principal theories that describe the possible interaction between municipal (i.e. domestic) and international law. As A.F. Bayefsky describes:

> [There are] two general theories about the relationship between municipal law and international law: the adoption and the transformation theories. The adoption theory states that international law is part of domestic law automatically, that is, without an act of incorporation, except where it conflicts with statutory law, or well-established rules of the common law. Transformation theory expresses the view that international law is only part of domestic law when it has been incorporated into domestic law.[46]

While there is no clear statement from the Supreme Court of Canada,[47] it may be strongly argued that the adoption theory applies to customary international law.[48] Therefore, subject to legislative override,[49] customary international law is a part of Canadian domestic law and is enforceable within Canada.[50] However, to our knowledge, there have not been any cases where such a right of action has been explicitly recognized in Canada.[51]

---

[40] The Sub-Commission is the main subsidiary body of the Commission on Human Rights. In 1999 the Economic and Social Council changed the name of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to "Sub-Commission on the Promotion and Protection of Human Rights".

[41] U.N. Commission on Human Rights resolution 1995/32 of 3 March 1995.

[42] The International Decade of the World's Indigenous People commenced on December 10, 1994: see General Assembly resolution 48/163, 21 December 1993. Earlier, the General Assembly had proclaimed 1993 as International Year of the World's Indigenous People: see General Assembly resolution 45/164, 18 December 1990.

[43] U.N. Commission on Human Rights, *Human rights and indigenous issues*, Res. 2001/57, 24 April 2001. The Chairperson of the Commission on Human Rights appointed Mr. Rodolfo Stavenhagen of Mexico as the Special Rapporteur.

[44] Canada, *Canada in the World*, Canadian Foreign Policy Review, 1995 available at http://www.dfait-maeci.gc.ca/foreign_policy/cnd-world/menu-en.asp:
As stated by the Special [Parliamentary] Joint Committee, "Domestic policy is foreign policy ... foreign policy is domestic policy."

[45] U.S. National Security Council, "The National Security Strategy of the United States of America", September 2002, at p. 31: "Today, the distinction between domestic and foreign affairs is diminishing. In a globalized world, events beyond America's borders have a greater impact inside them."

[46] A.F. Bayefsky, International Human Rights Law: Use in Canadian Charter of Rights and Freedoms Litigation (Toronto: Butterworths, 1992), at p. 5.

[47] S.J. Toope, "The Uses of Metaphor: International Law and the Supreme Court of Canada" (2001) 80 Can. Bar Rev. 534, at p. 536.

[48] M.A. Luz & C.M. Miller, "Globalization and Canadian Federalism: Implications of the NAFTA's Investment Rules" (2002) 47 McGill L.J. 951, at p. 978: "The basic rule is that customary international law is incorporated into Canadian law without enacting legislation unless the customary rule clearly conflicts with existing statutory law or with established principles of common law."

[49] *Suresh v. Canada (Minister of Citizenship and Immigration)* (2000), 183 D.L.R. (4th) 629 (F.C.A.) at 659; reversed for other reasons at 2002 SCC 1: "While principles of customary international law may be recognized and applied in Canadian courts as part of the domestic law, this is true only in so far as those principles do not conflict with domestic law."

In regard to international treaties or conventions, the rule appears much more clear. These instruments would only be a part of the law of Canada, if implemented by legislation.[52] In other words, the transformation theory would apply.

However, even if an international treaty or convention has not been implemented by legislation in Canada, it may still be used as an interpretive aid in determining existing rights and obligations. As stated by Madame Justice L'Heureux-Dubé in *Baker v. Canada (Minister of Citizenship and Immigration)*:

> International treaties and conventions are not part of Canadian law unless they have been implemented by statute: *Francis v. The Queen*, [1956] S.C.R. 618, at p. 621; *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*, [1978] 2 S.C.R. 141, at pp. 172-73. ...
>
> Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330:
>
> > [T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.[53]

In regard to First Nations and Metis peoples in Canada, the Supreme Court of Canada and the lower courts are beginning to refer to specific norms in international human rights instruments,[54] even where such instruments have not yet been finally adopted.[55] This approach is consistent with the Report of the *Royal Commission on Aboriginal Peoples* which concludes that "both the draft [U.N.] declaration and [Indigenous and Tribal Peoples] convention 169 are authoritative statements of norms concerning Indigenous peoples, and we urge the

---

[49] W.A. Schabas, "Twenty-Five Years of Public International Law at the Supreme Court of Canada" (2000) 79 Can. Bar Rev. 174, at p. 182: " ... from the standpoint of domestic effect, at common law customary international law has a leg up on conventional law because it does not require implementing legislation. Customary international law is the "law of the land", subject of course to the right of the legislature to override it."

[50] A.F. Bayefsky, note 46, *supra*, at p. 17: " ... customary international human rights law can be directly invoked, as part of the law of the land, to itself provide the basis for a remedy. This right of action has not been affected by the Charter. ... In other words, in human rights areas where the common law has not been settled, customary international human rights law can continue to fill in the gaps." See also F. Rigaldies and J. Woehrling, "Le juge interne canadien et le droit international" (1980) 21 C. de D. 293, at pp. 308-309 (example of how customary international law fills gaps in the existing legal regime).

[51] A.F. Bayefsky, note 46, *supra*, at p. 17.

[52] *Id.*, at p. 25. See also H.M. Kindred *et al.*, eds., *International Law: Chiefly as Interpreted and Applied in Canada, 6th* ed. (Toronto: Emond Montgomery Publications, 2000), at p. 166: "A good argument may be made ... that Canada is adoptionist in respect of customary international law and transformationist in respect of conventional law – the latter clearly springing from following the British tradition that treaties must be enacted into law by Parliament before they will affect private rights."

[53] *Baker* v. *Canada (Minister of Citizenship and Immigration)*, (1999) 174 D.L.R. (4th) 193 (S.C.C.), paras. 69-70. L'Heureux-Dubé J. added at para. 70: "The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries ... It is also a critical influence on the interpretation of the scope of the rights included in the Charter: *Slaight Communications*, *supra*; *R. v. Keegstra*, [1990] 3 S.C.R. 697.

[54] See, *e.g.*, *Mitchell v. Canada (Minister of National Revenue)* [2001] 1 S.C.R. 911, 3 C.N.L.R. 122, para. 82, where reference is made to the *Indigenous and Tribal Peoples Convention, 1989*, Art. 32 (State government obligation "to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields").

[55] *Mitchell v. Canada (Minister of National Revenue)*, note 54, *supra* , where reference is made to the draft *U.N. Declaration on the Rights of Indigenous Peoples*, Art. 35 (Indigenous peoples' right to maintain and develop cross-border contacts, etc.). The draft *Declaration* was unanimously adopted by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities by its resolution 1994/45, August 26, 1994, but has not been adopted by the U.N. General Assembly.

See also *R. v. Powley*, [2000] 2 C.N.L.R. 233 (Ont. Sup. Ct. of Justice), para. 58, where reference is made to the draft *U.N. Declaration* in relation to Art. 3 (right of Indigenous peoples to self-determination); Art. 8 (right to "maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such"); and Art. 25 (right to "maintain and strengthen their distinctive spiritual and material relationship with the lands ... which they have traditionally owned or otherwise occupied or used").

Government of Canada to protect Aboriginal lands and resources according to these norms."[56] A similar approach is also being taken by the Inter-American Commission on Human Rights, when considering Indigenous peoples' complaints concerning their lands and other rights.[57]

In regard to First Nations and Metis peoples and treaty rights, reliance upon international concepts is highly appropriate. As underlined by the Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada, emerging international norms guide both governments and the courts and cannot be ignored:

> Aboriginal rights from the beginning have been shaped by international concepts. ... More recently, emerging international norms have guided governments and courts grappling with aboriginal issues. Canada, as a respected member of the international community, cannot ignore these new international norms any more than it could sidestep the colonial norms of the past. Whether we like it or not, aboriginal rights are an international matter.[58]

III. IMPORTANCE OF ADOPTING A HUMAN RIGHTS APPROACH

In addition to the above analyses, there are other compelling reasons for adopting a human rights approach especially one that embraces relevant and uplifting international norms. These additional rationales are described briefly below.

First, it is widely recognized that Indigenous peoples' rights are human rights.[59] As I. Cotler states: "A ninth category [of human rights], one distinguishably set forth in the Canadian *Charter*—and increasingly recognized in international human rights law—is the category of *aboriginal rights*."[60]

Like the rights in the various international human rights instruments,[61] Indigenous rights are of a political, economic, social, cultural and spiritual nature. However, Indigenous rights are predominantly "collective".[62] Therefore, it is necessary to elaborate Indigenous rights from an Indigenous perspective in new instruments, such as is being done in the *U.N. Declaration on the Rights of Indigenous Peoples.*[63] This is wholly consistent with Indigenous peoples' right to be different[64] and tolerance for difference is a fundamental international value.[65]

---

[56] Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(2), p. 568. At p. 567, the Report cites S.J. Anaya, "Canada's Fiduciary Obligation Toward Indigenous Peoples in Quebec under International Law in General", in Canada's Fiduciary Obligation to Aboriginal Peoples in the Context of Accession to Sovereignty by Quebec (Ottawa: Minister of Supply and Services Canada, 1995), vol. 1, International Dimensions, 9 at p. 24, where Anaya describes the draft *U.N. Declaration* as "an authoritative statement of norms concerning Indigenous peoples on the basis of generally applicable human rights principles".

[57] I/A Comm. H.R., *Mary and Carrie Dann v. United States*, Case N° 11.140, Report No. 113/01, at para. 124:

> ... in addressing complaints of violations of the American Declaration it is necessary for the Commission to consider those complaints in the context of the *evolving rules and principles of human rights law in the Americas and in the international community more broadly*, as reflected in treaties, custom and other sources of international law. Consistent with this approach, in determining the claims currently before it, the Commission considers that *this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples*. [emphasis added]

[58] B. McLachlin, Chief Justice of Supreme Court of Canada, "Aboriginal Rights: International Perspectives", Order of Canada Luncheon, Speech, Canadian Club of Vancouver, Vancouver, British Columbia, February 8, 2002.

[59] Similarly, see also J.Y. Henderson, M.L. Benson & I.M. Findlay, *Aboriginal Tenure in the Constitution of Canada* (Toronto: Carswell, 2000) at p. 447: "Constitutional entrenchment of Aboriginal and treaty rights was intended to ensure that elected representatives, the administrative agencies, and the courts gave due regard and protection to the rights of Aboriginal peoples. It provided a safeguard for their distinct human rights and individual freedoms called 'Aboriginal rights'..."

See also P. Joffe, "Assessing the Delgamuukw Principles: National Implications and Potential Effects in Quebec", (2000) 45 McGill L.J. 155, at p. 182; C.P. Cohen, ed., Human Rights of Indigenous Peoples (Ardsley, N.Y.: Transnational Publishers, 1998); M.E. Turpel, *Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition*, 25 Cornell Int'l L. J. 579; R. Torres, *The Rights of Indigenous Populations: The Emerging International Norm*, (1991) 16 Yale J. Int'l L. 127; D. Sanders, *Collective Rights*, (1991) 13 Hum. Rts. Q. 368, at 379-380; and Symposium, *The Human Rights of Indigenous Peoples*, (1982) 36 Colum. J. Int'l Aff. 1-161; B. Hocking, (ed.), *International Law and Aboriginal Human Rights* (Toronto: Carswell, 1988).

[60] I. Cotler & F.P. Eliadis, (eds.), *International Human Rights Law: Theory and Practice* (Montreal: Canadian Human Rights Foundation, 1992) 63, at p. 66.

[61] *Universal Declaration of Human Rights*, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), *adopted by* the U.N. General Assembly on December 10, 1948; *International Covenant on Civil and Political Rights*; and *International Covenant on Economic, Social and Cultural Rights*.

[62] The predominately collective nature of Indigenous peoples' rights is clearly recognized in the draft *U.N. Declaration on the Rights of Indigenous Peoples* and in the *Indigenous and Tribal Peoples Convention, 1989* (No. 169).

In Canada, see also *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 153 D.L.R. (4th) 193, (1998) 37 I.L.M. 268, at para. 115: Aboriginal title cannot be held by individual aboriginal persons; it is a collective right to land held by all members of an aboriginal nation." Yet Aboriginal peoples as distinct "peoples" have not had their collective human rights recognized as such by Canadian courts. In the absence of this recognition, violations or denials of Aboriginal or treaty rights may be treated too casually.

Second, as former U.N. Secretary-General Boutros-Ghali highlighted in 1993, human rights constitute a "common language of humanity".[66] In every region of the globe, governments, peoples and individuals are committed to the promotion and respect of human rights. All Member States of the United Nations are legally bound to uphold at all times the Purposes and Principles of the *U.N. Charter,*[67] which include "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".[68]

Third, a human rights approach should serve to ensure a more coherent and consistent interpretation and treatment of Indigenous peoples' fundamental rights. To date, Canadian courts have not engaged in comprehensive human rights analyses in interpreting Aboriginal and treaty rights. Two U.N. committees concerned with human rights have linked Canada's extinguishment policies to "economic marginalization" and "dispossession".[69] Yet the Supreme Court of Canada continues to apply the discriminatory[70] and anachronistic doctrine of extinguishment to Aboriginal rights,[71] despite far-reaching adverse human rights considerations.[72]

---

[63] See also J.P. Kastrup, "The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective" (1997) 32 Tex. Int'l L.J. 97 at p. 106:

> "International indigenous rights may be considered as a more specific body of human rights, which target a more defined group of people and are derived from the more general body of human rights principles."

[64] The principle of equality and non-discrimination includes a "right to be different". See draft *United Nations Declaration on the Rights of Indigenous Peoples*, preamble: "... indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such".

In the Canadian context, see *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 171. Quoted with approval by the Supreme Court of Canada in *Lovelace v. Ontario,* [2001] 1 S.C.R. 950, para. 94:

> It must be recognized ... that the promotion of equality under s. 15 [of the *Canadian Charter of Rights and Freedoms*] has a much more specific goal than the mere elimination of distinctions. If the Charter was intended to eliminate all distinctions, then there would be no place for sections such as 27 (multicultural heritage); 2(a)(freedom of conscience and religion); 25 (aboriginal rights and freedoms); and other such provisions designed to safeguard certain distinctions. Moreover, the fact that identical treatment may frequently produce serious inequality is recognized in s. 15(2) ..."

See also P. Hughes, "Recognizing Substantive Equality as a Foundational Constitutional Principle" (1999) 22 Dalhousie L.J. 5, at 46; and D. Greschner, "The Purpose of Canadian Equality Rights" (2002) 6 Rev. Const'l. Studies 291, at 321: "Equality rights are ways of accommodating different groups, of making room for everyone and of ensuring that everyone belongs to the Canadian community."

[65] See, *e.g.,United Nations Millennium Declaration,* U.N. Doc. A/RES/55/2, 8 September 2000, para. 6, where included among the fundamental values is: "**Tolerance.** Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted." [emphasis in original]

See also U.N. Secretary-General (K. Annan), "Intolerance – Scourge with Deadly Consequences – Threat to Democracy, Peace, Security, Says Secretary-General on International Day", *Press Release,* SG/SM/9003, OBV/391, 12 November 2003: "Tolerance is much more than peaceful coexistence of different cultures. It is an active and positive attitude, inspired by a recognition of and respect for the rights and freedoms of others. It means that concern for others must prevail over callousness and contempt, and that an effort to know the "other" takes the place of ignorance, blind prejudice and discrimination."

[66] B. Boutros-Ghali, Opening Statement by the United Nations Secretary-General, "Human Rights: The Common Language of Humanity", in World Conference on Human Rights, *The Vienna Declaration and Programme of Action June 1993* UN DPI/1394-39399-August 1993-20 M.

[67] *Charter of the United Nations,* Art. 2, para. 2.

[68] *Id.,* Art. 1, para. 3.

[69] See Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada,* U.N. Doc. E/C.12/1/Add.31, 10 December 1998, para. 18:

> The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by RCAP [Royal Commission on Aboriginal Peoples], and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the *extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party.* [emphasis added]

See also Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada,* CERD/C/61/CO/3,23 August 2002, para. 17:

> The Committee views with concern the direct connection between Aboriginal economic marginalisation and the ongoing dispossession of Aboriginal people from their land, as recognized by the Royal Commission. The Committee notes with appreciation the assurance given by the delegation that Canada would no longer require a reference to extinguishment of surrendered land and resources rights in any land claim agreements.

[70] D. Sambo, "Indigenous Peoples and International Standard-Setting Processes: Are State Governments Listening?", (1993) 3 Transnat'l L. & Contemp. Probs. 13, at p. 31: "The ongoing implementation of state extinguishment policies constitutes a very serious threat to indigenous societies. It is another relic of colonialism. Extinguishment is used to ensure state domination of indigenous peoples and to sever their ancestral ties to their own territories. No other people are pressured to 'extinguish' their rights to lands. This is racial discrimination."

[71] *R. v. Powley,* [2003] S.C.J. No. 43 online: QL (S.C.C.), para. 46: "The doctrine of extinguishment applies equally to Metis and to First Nations claims." See P. Joffe & M.E. Turpel, *Extinguishment of the Rights of Aboriginal Peoples: Problems and Alternatives,* A study prepared for the Royal Commission on Aboriginal Peoples, vol. 1, 1995, c. 3 (Government Extinguishment policies and the Metis), where it is concluded that the government process of extinguishment was invalid.

[72] P. Joffe & M.E. Turpel, note 71, *supra,* vol. 2, c. 8 (Compatibility of Extinguishment with Human Rights and Other Norms), pp. 322 *et seq.*

Fourth, in Canada and internationally,[73] it is well recognized that the principles of democracy, rule of law and respect for human rights are profoundly interrelated.[74] Therefore, a human rights approach is required to ensure balanced and comprehensive legal analyses. Moreover, Canadian values in terms of human rights are rooted in international standards.[75]

In the *Québec Secession Reference*, the Supreme Court of Canada stated that underlying constitutional principles include democracy, constitutionalism and the rule of law, and respect for minority rights.[76] These underlying principles function together and cannot be defined in isolation from one another.[77] The Court also highlighted that the protection of Aboriginal and treaty rights "whether looked at in their own right[78] or as part of the larger concern with minorities, reflects an important underlying constitutional value."[79]

Fifth, the acute poverty facing many First Nations and Metis peoples in Saskatchewan and other parts of Canada is interrelated with the denial of their basic human rights. Such poverty is not happenstance,[80] but is a result of colonialism, dispossession of lands and resources, discrimination and other unacceptable actions.[81]

---

[73] D. Petrova, *Strengthening the Rule of Law in Building Democratic Societies: Human Rights in the Administration of Justice*, Seminar on the Interdependence Between Democracy and Human Rights. Organized by the Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002, para. 1.3.D:

> ... I would describe the relationship between the concepts of democracy, human rights and the rule of law from the point of view of their normative value as follows: **the enjoyment of all human rights by all persons is the ultimate civilisational horizon of democracy. The achievement of high level of human rights protection and promotion is a measure for the success of a democracy. The rule of law in a democratic society is a prerequisite and main vehicle for the protection of human rights.** [bold in original]

[74] P. Joffe, note 59, *supra*, at p. 188. See United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), reprinted in (1993) 32 I.L.M. 1661, Part I, para. 8: "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing"; and Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting on the Human Dimension of the Conference on Security and Co-operation in Europe*, June 29, 1990, (1990) 29 I.L.M. 1305, at p. 1307, preamble: "pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms".

See also the *Inter-American Democratic Charter*, adopted by acclamation by the Hemisphere's Foreign Ministers and signed by the 34 countries of the Americas at the 28th special session of the OAS General Assembly, Lima, Peru, September 11, 2001, Art. 7: "Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence". Art. 2 provides: "The effective exercise of representative democracy is the basis for the rule of law".

[75] S.J. Toope, "Legal and Judicial Reform through Development Assistance: Some Lessons" (2003) 48 McGill L.J. 357 at pp. 387-388:

> It must be emphasized that Canadian legal values concerning human rights are rooted directly in international standards, articulated both in formal treaties and in various plans of action adopted to promote the implementation of treaty rights. In addition, Canadians have taken a leadership role in the articulation of principles of substantive equality within the legal system.

[76] *Reference re Secession of Québec*, [1998] 2 S.C.R. 217, (1998) 161 D.L.R. (4th) 385, 228 N.R. 203, *reprinted in* (1998) 37 I.L.M 1342, para. 32.

[77] *Id.*, para. 49: "These defining principles function in symbiosis. No single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other."

[78] Of course, Indigenous peoples are distinct peoples and not simply minorities. Therefore, it is more appropriate to treat the protection of Aboriginal and treaty rights as a separate constitutional principle. Similarly, see C.-A. Sheppard, "The Cree Intervention in the Canadian Supreme Court Reference on Quebec Secession: A Subjective Assessment" (1999) 23 Vermont L. Rev. 845 at p. 856; and P. Russell, "The Supreme Court Ruling. A Lesson in Democracy", Cite Libre, English ed., vol. 26, no. 4, October-November, 1998, 29 at p. 30.

[79] *Reference re Secession of Québec*, note 76, *supra*, para. 82. In addition, it is worth noting that in *R. v. Marshall* (No. 2), [1999] 3 S.C.R. 533, para. 45, the constitutional obligation to protect Aboriginal and treaty rights is referred to as a "national commitment". See also *R. v. Powley*, note 71, *supra*, para. 45: "Section 35 reflects a new promise: a constitutional commitment ..."

In regard to commitments in treaties relating to Aboriginal peoples, see Royal Commission on Aboriginal Peoples, note 20, *supra*, at p. 37: "Treaty promises were part of the foundation of Canada, and keeping those promises is a challenge to the honour and legitimacy of Canada."

[80] Working Group on Indigenous Populations, "Principle Theme: Indigenous Peoples and the Their Right to Development, Including Their Right to Participate in Development Affecting Them", *Note by the secretariat*, E/CN.4/Sub.2/AC.4/2001/2, 20 June 2001, para. 11:

> What are the causes of indigenous poverty? There are a number of explanations, which are often linked to each other. In some cases, it is the paucity of resources indigenous peoples have at their disposal for their own development processes, and the negative impacts of large-scale development projects on their lives and lands. In other cases it is the marginal role they play in the national development process and the exclusion from the market, which prevents indigenous peoples from enjoying the same opportunities as others. In yet other situations, it is direct discrimination and exclusion from society that keeps indigenous peoples in poverty.

[81] See Introduction of this paper. See also See "Statement of Reconciliation" in Indian Affairs and Northern Development, *Gathering Strength – Canada's Aboriginal Action Plan* (Ottawa: Minister of Public Works and Government Services, 1997), at p. 4:

> Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices ... We must acknowledge that *the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.*" [emphasis added.]

Severe poverty can inhibit significantly the enjoyment of human rights.[82] It is well-established that Indigenous peoples and individuals who live in debilitating poverty - even those living in developed countries such as Canada[83] - are precluded from the effective exercise or enjoyment of fundamental human rights.[84]

In Indigenous communities and nations, denials of Indigenous peoples' collective human rights, including self-determination, are root causes and major contributors to deep-seated health[85] and other socio-economic problems.[86] Land and resource dispossessions entail highly serious and far-reaching human rights abuses.[87] They endanger[88] the survival and well-being of distinct Indigenous peoples and cultures.[89] Both peoples and individuals are impacted.

Therefore, eradicating this poverty is in essential ways "a human rights challenge".[90] A human rights approach is especially appropriate for the purpose of effecting broad reforms relating to Aboriginal peoples and improvements to the administration of justice. In the words of D. Garcia-Sayan: "With regard to the interdependence of democracy and human rights, the administration of justice is an essential component of a democratic society as it is the primary guarantor of the protection of human rights."[91]

---

[82] U.N. Commission on Human Rights, *Human rights and extreme poverty*, Res. 2003/24, 22 April 2003, para. 1(c): "The existence of widespread absolute poverty inhibits the full and effective enjoyment of human rights and makes democracy and popular participation fragile ..."

See also United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, note 74, *supra*, Part I, para. 14 : "... the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community."

[83] R. Mullerson, "Reflections on the Future of Civil and Political Rights" in B.H. Weston & S.P. Marks, eds., *The Future of International Human Rights* (Ardsley, New York: Transnational Publishers, 1999) 225, at p. 235: "Existing poverty in some highly developed countries ... are among the conditions that make the enjoyment of some civil and political rights for many people impossible, and thus, there still is some room for improvement in civil and political even in rich democratic countries in the sense of making the enjoyment of these rights real to everyone."

[84] Working Group on Indigenous Populations, "Principle Theme: Indigenous Peoples and the Their Right to Development, Including Their Right to Participate in Development Affecting Them", *Note by the secretariat*, E/CN.4/Sub.2/AC.4/2001/2, 20 June 2001, para. 11: "Poverty is a denial of all human rights to an individual and group and erodes civil and political, as well as economic, social and cultural rights. As has been noted by the Working Group on numerous occasions, indigenous peoples form a disproportionately larger share among the poor."

[85] Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, adopted 11 May 2000, 22nd sess., U.N. Doc. E/C.12/2000/4 (2000), para. 27:

> The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

[86] Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 3, at p. 5: "Current social problems are in large part a legacy of historical policies of displacement and assimilation, and their resolution lies in recognizing the authority of Aboriginal people to chart their own future within the Canadian federation."

See also American Indian Law Alliance, "Self-Determined Indigenous Children and Youth", Second session of the Permanent Forum on Indigenous Issues, 12-23 May 2003, United Nations Headquarters, New York, preface: "It is crucial to appreciate that the persistent undermining and denial of indigenous peoples' human rights, including the right to self-determination, is a major root cause and contributing factor to the acute health and socio-economic problems in many Indigenous communities and nations. If not reversed, this negative dynamic will continue to severely undermine the integrity of our families, communities and nations."

[87] R.J. Epstein, "The Role of Extinguishment in the Cosmology of Dispossession" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes* (The Hague: Kluwer Law International, 2002) 45, at p. 55: "Indigenous peoples have demonstrated that they have a special relationship with land. Land is a source of identity, but it is also the source of all things needed to survive. Consequently, confiscation of indigenous peoples' land necessarily entails human rights abuses of the most serious and fundamental kind."

[88] R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, note 18, *supra*, at p. 105: "Indigenous peoples are aware of the fact that unless they are able to retain control over their land and territories, *their survival as identifiable, distinct societies and cultures is seriously endangered.*" [emphasis added]

[89] Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(2), at p. 557: "Without adequate lands and resources, Aboriginal nations will be unable to build their communities and structure the employment opportunities necessary to achieve self-sufficiency. Currently, on the margins of Canadian society, they will be pushed to the edge of economic, cultural and political extinction."

[90] United Nations Development Program, *Human Development Report 2000* (Oxford: Oxford University Press, 2000), at p. 73: "... eradicating poverty is more than a major development challenge – it is a human rights challenge".

[91] D. Garcia-Sayan, note 36, *supra*, at p. 13, para. 29.

IV. RIGHT OF SELF-DETERMINATION AND S. 35 OF THE CONSTITUTION ACT, 1982

Should the Implementation office, established after the *Commission on First Nations and Métis Peoples and Justice Reform*, choose to adopt a human rights approach and incorporate international norms in its recommended reforms, a key aspect should pertain to Indigenous peoples' right of self-determination. In regard to the administration of justice, a central aspect to consider in relation to Indigenous peoples is their right to self-determination *under international law*.[92]

In Australia, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) examined the problems with the administration of justice in relation to Aboriginal peoples. RCIADIC concluded that factors outside the justice system were even more significant than those within:

> ... the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place. The view propounded by this report is that the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society-socially, economically and culturally.[93]

As a result, RCIADIC emphasized that "empowerment of Aboriginal society — and associated with it the right to self-determination — is a central issue in the report"[94] and urged measures to eliminate the domination by non-Aboriginal society.[95] Similarly, the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* recommended in a major report that self-determination in relation to juvenile justice issues be implemented through national framework and standards legislation.[96]

Under international law, the right of self-determination is so important that it is the first article in both of the human rights Covenants.[97] The affirmation of the right of self-determination of Indigenous peoples is a core element of the draft *U.N. Declaration on the Rights of Indigenous Peoples* and essential to its integrity.[98] Self-determination is a right of all peoples.[99] In regard to peoples, including Indigenous peoples,[100] the right of self-determination is an inalienable,[101] collective human right.[102] It is also a "prerequisite" for the enjoyment of *all* other human rights.[103] In addition, self-determination is the "oldest aspect of the democratic entitlement".[104] Denial of this right "is essentially incompatible with true democracy."[105] Furthermore, the right of peoples to self-determination under international law includes natural resource rights.[106] The U.N. Human Rights Committee has explicitly confirmed that Indigenous peoples in Canada possess these resource rights under Article 1 of the *International Covenant on Civil and Political Rights*.[107]

---

[92] It is important to emphasize here that the right of self-determination being referred to is the existing right under the international human rights Covenants. For example, the United States has its own domestic form of self-determination for Indigenous peoples in the U.S. that falls significantly short of the international standard.

[93] Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *National Report* (Elliott Johnston, Commissioner), Vol. 1, (Canberra, Australia: AGPS, 1991), para. 1.7.1.

[94] RCIADIC, note 93, *supra*, para. 1.7.7.

[95] RCIADIC, note 93, *supra*, para. 1.7.6:

> But running through all the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.

[96] Australian Human Rights and Equal Opportunities Commission, *Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney, 1997), Annex 9, Recommendations 43a, b, andc.

[97] See identical Art. 1, para. 1 in both the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[98] Draft *U.N. Declaration on the Rights of Indigenous Peoples*, Art. 3: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[99] R. McCorquodale, "Human Rights and Self-Determination" in M. Sellers, ed., *The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples* (Oxford/Washington, D.C.: Berg, 1996) 9, at 9-10: "[The right to self-determination] now applies to all peoples in all territories, not just colonial territories, and to all peoples within a state."

[100] Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government, United Nations Meeting of Experts, Nuuk, Greenland, 24-28 September 1991, U.N. Doc. E/CN.4/1992/42 and Add.1, preamble: "... indigenous peoples constitute distinct peoples and societies, with the right to self-determination, including the right to autonomy, self-government, and self-identification."

Under both international human rights Covenants, Canada and other States have an affirmative duty to "promote the realization of a right of self-determination … and … respect that right, in conformity with the provisions of the Charter of the United Nations."[108] In 1996, the government of Canada formally declared in United Nations fora in Geneva that it is legally and morally committed to the non-discriminatory application of the right of self-determination to indigenous and non-indigenous Peoples:

> [The right of self-determination] ... is fundamental to the international community, and its inclusion in the UN Charter, and in the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights* bears witness to the important role that it plays in the protection of human rights of all peoples. ... Canada is therefore legally and morally committed to the observance and protection of this right. We recognize that this right applies equally to all collectivities, indigenous and non-indigenous, which qualify as peoples under international law.[109]

---

[101] Human Rights Committee, General Comment No. 12, Article 1, 21st sess., A/39/40 (1984), para. 2: "Article 1 [of the International Covenant on Civil and Political Rights] enshrines an inalienable right of all peoples ..."

[102] R. McCorquodale, "Human Rights and Self-Determination", note 99, *supra*, at p. 11: "... it is certain that self-determination is now a human right in international law."

See also I. Shearer, *Starke's International Law*, 11 ed. (London: Butterworths, 1994), at 338: "... a number of important human rights are not rights of individuals, but collective rights, i.e. the rights of groups or of peoples. This is clear so far as concerns the right of self-determination".

[103] U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Right to Self-Determination: Implementation of United Nations Resolutions, U.N. Doc. E/CN.4/Sub.2/405/Rev.1 (1980) (H. Gros Espiell, Special Rapporteur) at p. 10, para. 59:

> ... human rights can only exist truly and fully when self-determination also exists. Such is the fundamental importance of self-determination as a human right and as a prerequisite for the enjoyment of all the other rights and freedoms.

See also K. Mills, *Human Rights in the Emerging Global Order: A New Sovereignty?* (New York: St. Martin's Press, 1998), at p. 83:

> ... while self-determination is required for the development and enjoyment of human rights, human rights are also a precondition for communal self-determination. They cannot be divorced from each other. In this sense, self-determination is a human right along with civil, political, and economic rights which, taken as a whole, describe and guarantee the rights of human existence.

[104] T. Franck, "The Emerging Right to Democratic Governance", (1992) 86 Am. J. Int'l L. 46 at p. 52.

[105] R. Stavenhagen, "Self-Determination: Right or Demon?" in D. Clark & R. Williamson, eds., Self-Determination: International Perspectives (New York: St. Martin's Press, 1996) 1, at p. 8.

[106] *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, Art. 1, para. 2: "All peoples may, for their own ends, freely dispose of their natural wealth and resources ... . In no case may a people be deprived of its own means of subsistence."

In regard to the interpretion of Art. 1, para. 2 of the Covenants, see A. Cassese, "The Self-Determination of Peoples", in L. Henkin, (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), 92 at p. 103: "This paragraph [in Art. 1], however, is not merely a reaffirmation of the right of every state over its own natural resources; it clearly provides that the right over natural wealth belongs to *peoples*. [emphasis in original.]

[107] In regard to Aboriginal peoples, see Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8: "... the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence."

See also *Ominayak, Chief of the Lubicon Lake Band v. Canada* (Communication no. 167/1984), *Official Records of the Human Rights Committee 1989/90*, Vol. II (New York: United Nations, 1995), pp. 381-391. See also Communication no. 167/1984, Decisions of the Human Rights Committee, U.N. Doc. CCPR/C/38/D/167/1984 (1990), para. 13.3: "... the Committee reaffirmed that the Covenant recognizes and protects in most resolute terms a people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."

[108] See the identical Art. 1, para. 3 in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

[109] *Statements of the Canadian Delegation*, Commission on Human Rights, 53rd Sess., Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995, 2nd Sess., Geneva, 21 October - 1 November 1996, cited in *Consultations Between Canadian Aboriginal Organizations and DFAIT in Preparation for the 53rd Session of the U.N. Commission on Human Rights, February 4, 1997* (statement on art. 3, right to self-determination, on October 31, 1996).

With the above context in mind, let us now consider the significance of the right of self-determination to Aboriginal and treaty rights in s. 35 of the Constitution Act, 1982. As a human right, self-determination is interdependent, indivisible and interrelated with all other human rights.[110]

It has already been demonstrated in this paper that Aboriginal rights are human rights.[111] While each treaty should be examined on its own merits, it may at least be generally concluded that, to a large degree, Indigenous peoples' treaty rights are also human rights. Their treaties often entail a wide range of human rights considerations.[112] Whether in general or specific terms, Indigenoous peoples' treaties constitute an elaboration of arrangements relating to the political, economic, social, cultural or spiritual rights and jurisdictions of the Indigenous peoples concerned. These treaties also often include important dimensions relating to the collective and individual security of Indigenous peoples and individuals.

Some might argue that "peace and friendship" treaties do not really entail human rights. However, such treaties address Indigenous peoples' right to security. In forming alliances, Indigenous peoples were also manifesting their right to determine their own relationships,[113] which is an inherent aspect of their right to self-determination. At the very least, "peace" is interrelated and interdependent with human rights[114] and a vital requirement for their enjoyment.[115] "Peace" is also described as "a value and a principle in itself, based on democracy, justice, respect for human rights, solidarity, security, and respect for international law."[116]

Based on the above, Indigenous peoples' human right to self-determination is an essential aspect in the interpretation and exercise of Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*. As K. Roach suggests, ""In devising remedies, courts should be sensitive to the purposes of aboriginal rights, including the role of treaty-making and self-determination, while recognizing that they have a duty to enforce aboriginal rights."[117]

[110] *Vienna Declaration and Programme of Action*, note 74, *supra*, Part I, para. 5:
All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

[111] See heading III (Importance of Adopting a Human Rights Approach), *supra*.

[112] For example, Indigenous peoples' disputes relating to land title and rights clearly "encompass distinct human rights considerations": see I.A.Comm. H.R., *Mary and Carrie Dann v. United States*, Case N° 11.140, Report No. 113/01, at para. 123:

> ... in determining the claims currently before it, the Commission considers that this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples. As the following analysis indicates, these norms and principles encompass distinct human rights considerations relating to the ownership, use and occupation by indigenous communities of their traditional lands. Considerations of this nature in turn controvert the State's contention that the Danns' complaint concerns only land title and land use disputes and does not implicate issues of human rights.

In the *Dann* case, the Dann sisters asserted that the title of the Western Shoshone to its ancestral lands is based on both Aboriginal and treaty rights (para. 33). The treaty referred to was the 1863 *Treaty of Ruby Valley*, 18 U.S. Stat. 689, ratified by the United States in 1866 and proclaimed on October 21, 1869.

[113] See, for example, draft *U.N. Declaration on the Rights of Indigenous Peoples*, preamble: "... indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect".

[114] *Final Act of the Conference on Security and Co-operation in Europe (Helsinki Final Act)*, signed by 35 states (including Canada and the United States) on August 1, 1975, *reprinted in* (1975) 14 I.L.M. 1292, Principle VII (Respect for human rights and fundamental freedoms):

> The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

[115] See U.N. Commission on Human Rights, *Promotion of peace as a vital requirement for the full enjoyment of all human rights by all*, Res. 2003/61, 24 April 2003, para. 1: "peace is a vital requirement for the promotion and protection of all human rights for all".

See also Human Rights Committee, *General Comment No. 12, Article 1*, 21st sess., A/39/40 (1984), para. 8: "... history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding".

[116] *Declaration on Security in the Americas*, adopted at the third plenary session of October 28, 2003, Special Conference on Security, Mexico City, OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev. 1, 28 October 2003, para. 3.

[117] K. Roach, *Constitutional Remedies in Canada* (Aurora, Ontario: Canada Law Book, 2002), at p. 15-1. Professor Roach adds at p. 15-3: "A purposive approach to remedies for aboriginal rights will recognize that both the history and future of aboriginal rights involve elements of self determination." See also P. Joffe, note 99, *supra*, at pp. 174-181.

It is worth noting that the government of Canada has recognized in a formal policy that the inherent right of Aboriginal peoples to self-government is an existing Aboriginal right under s. 35.[118] Since the right to self-government is a political aspect of the right of self-determination,[119] it would appear that this latter right is included in s. 35.

Further, in the *Québec Secession Reference*, the Supreme Court of Canada suggests that Aboriginal peoples' status and rights have a direct and substantial bearing on the question[120] of self-determination under Canadian and international law. In direct response to this question, the Court stressed "the importance of the submissions made ..., respecting the rights and concerns of aboriginal peoples in the event of a unilateral secession, as well the appropriate means of defining the boundaries of a seceding Quebec with particular regard to the northern lands occupied largely by aboriginal peoples."[121]

Even if Canadian courts were to rule that the right of self-determination under the human rights Covenants has not been incorporated into Canadian law by enactment, courts could still consider this international human right for purposes of interpreting Aboriginal and treaty rights under s. 35.[122] In addition, the right of self-determination is considered to be customary international law (if not also a peremptory norm),[123] which means that it would likely be considered to be a part of Canadian law without legislative enactment.[124] This was the position of the Attorney General of Canada in the *Québec Secession Reference*:

---

[118] Indian Affairs and Northern Development, *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Ottawa: Minister of Public Works and Government Services Canada 1995) at p. 3:

> The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982. It recognizes as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations.

[119] Royal Commission on Aboriginal Peoples, note 20, supra, vol. 2(1), p. 175: "Self-government ... is the natural outcome of the exercise of the right of self-determination. Self-determination refers to the collective power of choice; self-government is one possible result of that choice."

See also S. J. Anaya, *Indigenous Peoples in International Law* (Oxford/New York: Oxford University Press, 1996), at p. 109: "Self-government is the overarching political dimension of ongoing self-determination". See also R. McCorquodale, "Self-Determination: A Human Rights Approach" (1994) 43 Int'l & Comp. L.Q. 857, at p. 864; and the draft U.N. *Declaration on the Rights of Indigenous Peoples*, art. 31: "Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government".

[120] The precise text of this Reference question was: "Does international law give the National Assembly, legislature or Government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or Government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"

[121] *Reference re Secession of Quebec*, note 26, supra, para. 139. This aspect of the Court's ruling makes eminent good sense. Since the right of self-determination is a relative right, the right of self-determination of the Quebecois would have to be balanced by that of Indigenous peoples in Quebec. See, e.g., R. McCorquodale, "Human Rights and Self-Determination", note 99, supra, at p. 16: "The right of self-determination is not ... an absolute right without any limitations."

[122] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at para. 60:

> International treaty norms are not, strictly speaking, binding in Canada unless they have been incorporated into Canadian law by enactment. However, in seeking the meaning of the Canadian Constitution, the courts may be informed by international law. ... Our concern is not with Canada's international obligations qua obligations; rather, our concern is with the principles of fundamental justice. We look to international law as evidence of these principles and not as controlling in itself.

[123] R. McCorquodale, *Self-Determination: A Human Rights Approach*, note 119, supra, at 858: "The right [of self-determination] has been declared in other international treaties and instruments, is generally accepted as customary international law and could even form part of *jus cogens*." See also S.J. Anaya, "Indigenous Rights Norms in Contemporary International Law" (1991) 8 Ariz. J. Int'l & Comp. Law 1 at pp. 29-30: "... self-determination is widely held to be a norm of general or customary international law, and arguably *jus cogens* (a peremptory norm)."

[124] K. Doehring, "Self-Determination" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 56, at p. 70: "The right of self-determination is overwhelmingly characterized as forming part of the peremptory norms of international law. However, this evaluation is also rejected by some. It can nevertheless be proved that such a qualification is correct." See also A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), at 140:

> It is no coincidence that whenever States have referred to self-determination as belonging to *jus cogens*, they have not specified either the area of application of self-determination, the means or the methods of its implementation, or the permissible outcome of self-determination. States have generically adverted to the "principle" ... or, more simply, to self-determination. It follows that the whole cluster of legal standards (the general principle and the customary rules) on self-determination should be regarded as belonging to the body of peremptory norms.

[125] At the international level, a similar ruling is found in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Merits, [1986] I.C.J. Rep. 14 (Merits) at pp. 94-95, para. 177:

> Even if the customary norm and the treaty norm were to have exactly the same content, this would not be a reason for the Court to hold that the incorporation of the customary norm into treaty-law must deprive the customary norm of its applicability as distinct from that of the treaty norm. ... More generally, there are no grounds for holding that when customary international law is comprised of rules identical to those of treaty law, the latter "supervenes" the former, so that the customary international law has no further existence of its own.

> [T]he principles of customary law relating to the right of self-determination are applicable in the present case, because they do not conflict with the applicable Canadian domestic law. *Since these principles of customary law can be 'incorporated' into domestic law by Canadian courts, it is respectfully submitted that Canadian courts unquestionably have jurisdiction to apply them.*[125] [emphasis added]

Constitutional rules of interpretation in Canada would further reinforce the application of the right of self-determination to Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*. For example, in the *Québec Secession Reference*, the Supreme Court of Canada applied the "living tree" doctrine[126] to the underlying principles in Canada's Constitution, which include the protection of Aboriginal and treaty rights.[127] This flexible doctrine[128] would enable Aboriginal peoples' rights under the Constitution to be interpreted in a manner consistent with their right to self-determination under international law.

V. INDIGENOUS PEOPLES' TREATIES – AN INTERNATIONAL CONCERN

If international human rights norms are to be applied to Aboriginal and treaty rights, it is critical that federal and provincial governments in Canada do not seek to seek to restrict or deny Indigenous peoples their status as "peoples", in order to restrict or deny them the human right of self-determination. Such actions would be discriminatory,[129] since *all* peoples including Indigenous peoples have the right of self-determination under international law (see heading IV *supra*).

---

[125] Reply By the Attorney General of Canada to Questions Posed By the Supreme Court of Canada at para. 8, online: QL (SCQR), in the matter of *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217. For a similar approach in the context of the Canadian Charter, see G.V. LaForest, "The Expanding Role of the Supreme Court of Canada in International Issues", (1996) 34 Can. Y.I.L. 89 at p. 97.

[126] *Edwards v. A.-G. Canada*, [1930] A.C. 124 (PC) at p. 136: "The [*Constitution Act, 1867*] planted in Canada a living tree capable of growth and expansion within its natural limits."

[127] *Reference re Secession of Quebec*, note 76, *supra*, at para. 52: "...observance of and respect for these [underlying constitutional] principles is essential to the ongoing process of constitutional development and evolution of our Constitution as a 'living tree', to invoke the famous description in *Edwards v. Attorney General for Canada*, [1930] A.C. 124 (P.C.), at p. 136."

It is worth noting that the Royal Commission on Aboriginal Peoples explicitly proposed that the "living tree" doctrine be applied to Indigenous peoples' treaties. See Royal Commission on Aboriginal Peoples, note 20, *supra*, at p. 33, where RCAP added: "Just as a country's constitution is organic, being shaped and reshaped continually by the evolving circumstances of human society, the principles of treaties made between nations must also be interpreted as the relationship evolves. ... Treaty relationships, once established or re-established, must be flexible enough to address new items of concern."

[128] *Reference re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 at 180: "The doctrine of the constitution as a living tree mandates that narrow technical approaches are to be eschewed ... The tree is rooted in past and present institutions, but must be capable of growth to meet the future."

See also *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145 at 155: "A constitution ... is drafted with an eye to the future ... Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind."

[129] *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 U.N.T.S. 195, (1966) 5 I.L.M. 352. *Adopted by* U.N. General Assembly on December 21, 1965, opened for signature on March 7, 1966, and *entered into force* on January 4, 1969, Art. 1:

> ... any distinction, *exclusion, restriction* or preference based on race, colour, descent, or national or ethnic origin which has the *purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing,* of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. [emphasis added]

See C. Scott, *Indigenous Self-Determination and Decolonization of the International Imagination: A Plea*, (1996) 18 Human Rts. Q. 814, at 817: "The exclusion of an indigenous people from the status of being a 'people' has at least the effect of creating discriminatory access to the special kind of freedom that other peoples enjoy, namely that of the human right to self-determination." See also *Working Paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20*, E/CN.4/Sub.2/2001/2, 18 August 2001, para. 11:

> ... I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples - a right recognized for all other peoples - or in the absurd denial of the use of the term "indigenous peoples", contradicting all logic of language and pretending in so doing that the different indigenous peoples of the world do not have a language, history or culture unique to them ...

Similarly, it would be vital to recognize the full status and significance of Indigenous peoples' treaties. The Supreme Court of Canada has acknowledged that Indigenous treaties are "sacred".[130] Failure to respect the status and significance of treaties would be inconsistent with the Crown's fiduciary obligations[131] – as well as with the principles of good faith, honour and trust that are associated with such obligations and with the process of treaty-making itself.[132] Further, Indigenous treaties serve as a benchmark for measuring fairness and justice. If treaty promises remain unfulfilled or ignored, it mars and impedes the good administration of justice. There may be little or no common ground with Indigenous communities/nations for effective partnerships or cooperation.

It is beyond the scope of this paper to examine these and other important aspects relating to Indigenous peoples' treaties. However, it would be useful to briefly comment on two aspects: i) treaties and treaty rights of Indigenous peoples are matters of international concern; and ii) Indigenous peoples' treaties are of international character. Increased understanding, sensitivity and dialogue on these matters could create an improved climate for any future reforms.

Before proceeding with some comments, it is worth noting that both the governments of Canada[133] and the United States,[134] each in their own way, are seeking to restrict Indigenous peoples' treaties as much as possible to a domestic context. These government positions give rise to a host of serious questions that are beyond the scope of this paper. However, the positions appear highly controversial and merit careful attention and response.

---

[130] *R. v. Badger*, [1996] 1 S.C.R. 771, at p. 793 (per Cory J.), [1996] 2 C.N.L.R. 77, at p. 92. See also Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(1), p. 33: "The consistent message emerging from the testimony of treaty nations is that the treaties are sacred and spiritual covenants that cannot be repudiated, any more than the cultures and identities of treaty nations can be repudiated."

[131] See, *e.g.*, L.I. Rotman, *Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada* (Toronto: University of Toronto Press, 1996), at p. 222: "Both pre- and post-Confederation treaties are independent roots of the Crown's modern fiduciary obligations."

[132] *Sparrow v. The Queen*, [1990] 1 S.C.R. 1075, at p. 1107: "[T]he honour of the Crown is always involved and no appearance of 'sharp dealing' should be sanctioned," quoting *R. v. Taylor and Williams* (1981), 34 O.R. (2d) 360 at 367, [1981] 3 C.N.L.R. 114 (C.A.).

J.Y. Henderson, "Interpreting *Sui Generis* Treaties", (1997) 36 Alta. L. Rev. 46, at p. 80: "It makes no difference whether the sharp dealings are in the negotiations or drafting of the treaties, or in the implementation of them. The courts have firmly stated that they do not tolerate or condone such conduct by the Crown".

See also *New Zealand Maori Council v. Attorney General*, [1987] 1 N.Z.L.R. 641 (C.A.), at 682, where, in the context of government action under the Treaty of Waitangi of 1840, Richardson J. stated: "The concept of the honour of the Crown also has continuing expression … in the international law doctrine of good faith". The same judge also made reference to the *U.N. Charter*, Art. 2 and the *Vienna Convention on the Law of Treaties*, Arts. 26 (*pacta sunt servanda*) and 31(1) (treaty shall be interpreted in good faith); and *Hoani Te Heuheu Tukino v. Aotea District Maori Land Board*, [1941] A.C. 308 (P.C.), where the Treaty of Waitangi received the same consideration as if it had been an international treaty made between States.

[133] Canada, "Perspective on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples", Background paper, Expert Seminar on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples, organized by OHCHR, Geneva, 15-17 December 2003, HR/GENEVA/TSIP/SEM/2003/BP.17.

[134] United States of America, "Presentation of the Government of the United States of America", Expert Seminar on treaties, agreements and other constructive arrangements between States and Indigenous Peoples, organized by OHCHR, Geneva, December 17, 2003. The U.S. chose not to participate in this Seminar, but made this presentation. An illustration of the U.S. position on Indigenous peoples' treaties is provided as follows:

> The United States also disagrees with the establishment of a section within the U.N. Treaty Registry which would be charged with locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States. Indigenous peoples live within the borders of an existing State or States. Treaties between States and the indigenous people located within them have the status of domestic law. The U.N. Treaty Registry's resources are not to be used to record domestic legal instruments, such as treaties between a State and indigenous people living within that State, as has been proposed. We would oppose any expenditure of UN resources on such an activity.

Are treaties and treaty rights of Indigenous peoples matters of international concern?

From the outset, it can be stated that Indigenous peoples' treaties and treaty rights are matters of international concern. Reasons to support this conclusion include the following.

First, it is well-established in international law that human rights issues are of international concern.[135] Therefore, Indigenous peoples' human rights — whether or not such rights are elaborated or reflected in treaties — must be of international concern. Treaties that include human rights considerations relating to Indigenous peoples must also be of international concern.

Second, international complaints mechanisms, such as the U.N. Human Rights Committee and the Inter-American Commission on Human Rights,[136] for years have examined the complaints of Indigenous peoples and non-Indigenous peoples (in accordance with established rules and procedures). In this context, any relevant treaties or treaty rights of Indigenous peoples are also included as matters of international concern.[137]

Third, the treaties and treaty rights of Indigenous peoples are, on an ongoing basis, the subject of standard-setting processes[138] and other international forums.[139] This is yet another indication of legitimate and continuing international concern.

Fourth, aside from relevant human rights aspects, Indigenous peoples[140] and their treaty and other rights are considered as matters of international concern.[141] In this context, it is worth noting that when First Nations,

[135] Conference on Security and Co-operation in Europe, Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect for Human Rights, Pluralistic Democracy, the Rule of Law, and Procedures for Fact-Finding, October 3, 1991, (1991) 30 I.L.M. 1670 at 1672, preamble:

> "The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order."

R. McCorquodale, "Self-Determination: A Human Rights Approach", note 119, *supra*, at 865: "... a State's internal protection of the right of self-determination is now of international concern, which is consistent with the development of international human rights law so that human rights are now a matter not solely within a State's domestic jurisdiction."

United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, note 74, *supra*, Part I, para. 4: "the promotion and protection of all human rights is a legitimate concern of the international community".

[136] See, *e.g.*, I-A Comm. H.R., *Mary and Carrie Dann v. United States*, Case N. 11.140, Report No. 113/01, where the relevance of rights of the Western Shoshone in the 1863 Treaty of Ruby Valley were part of the overall complaint.

[137] See, *e.g.*, the draft *U.N. Declaration on the Rights of Indigenous Peoples*, Art. 36: "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned."

[138] Examples of international standard-setting processes in Geneva that have addressed or are addressing Indigenous peoples' treaties and treaty rights include: the U.N. Working Group on Indigenous Populations and the open-ended and inter-sessional Working Group of the Commission on Human Rights that is currently considering the draft *U.N. Declaration*.

[139] Other such forums include the U.N. Permanent Forum on Indigenous Issues in New York and the Expert Seminar on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples, organized by the Office of the High Commissioner of Human Rights, Geneva, 15-17 December 2003.

[140] Establishment of a Permanent Forum on Indigenous Issues, ECOSOC Res. 2000/22, 28 July 2000, para. 2 (a):

> "The Economic and Social Council ... 2. Also decides that the Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights; in so doing the Permanent Forum shall: (a) Provide expert advice and recommendations on indigenous issues to the Council ..."

See also "Secretary General Says World's Indigenous Peoples 'Have a Home at UN'", Permanent Forum on Indigenous Issues, First Session, 17th & 18th Meetings, HR/4602, 23 May 2002: "KOFI ANNAN, Secretary-General of the United Nations, terming the first session of the Forum "historic", proclaimed to the world's indigenous peoples: "You have a home at the United Nations". Those peoples, he continued, had hopes, rights and aspirations that must be addressed by the Organization, as well as knowledge and skills that could help the international community in its long sought goals of development and peace."

B. Boutros-Ghali, Statement to U.N. General Assembly, in: "Living History: Inauguration of the "International Year of the World's Indigenous People"", (1993) 3 Transnat'l L. & Contemp. Probs. 168 at 171: "By respecting [indigenous peoples], by defending them, *by helping them take their place in the community of nations and in international life*, we are protecting the world itself, in the conception we have of the world with all its diversity. And we are protecting each of our cultures, each of our peoples."

[141] *Resolution on Action Required Internationally to Provide Effective Protection for Indigenous Peoples*, Adopted by the European Parliament in its plenary session, Strasbourg, February 9, 1994, Eur. Parl. Doc. PV 58(II)(1994), para. F: "noting that certain states have concluded treaties with indigenous peoples in the past and that some of these treaties have been shamelessly violated; whereas in this connection, in the context of increasing impoverishment, indigenous peoples are often the first to be dispossessed of rights, lands and resources;"

See also B. McLachlin, Chief Justice of Supreme Court of Canada, "Aboriginal Rights: International Perspectives", Order of Canada Luncheon Speech, Canadian Club of Vancouver, Vancouver, British Columbia, February 8, 2002: "Aboriginal rights from the beginning have been shaped by international concepts. ... Whether we like it or not, aboriginal rights are an international matter."

Metis or Indigenous rights are recognized as matters of international concern, this would also entail treaty rights. In their treaties with the Crown, Indigenous peoples elaborate arrangements relating to their First Nations and Metis rights.

Five, as stated in the preamble of the U.N. Declaration on the Rights of Indigenous Peoples, experts in the Working Group on Indigenous Populations and the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities both concluded that "treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility".

Are Indigenous peoples' treaties of an international character?

First, it is important to underline that since Indigenous peoples and their treaties are matters of international concern, these instruments already have some form of international character. S.J. Anaya reinforces this view in the following terms:

> ...whether or not treaties or agreements with indigenous peoples have the same juridical status as interstate treaties is not in *itself* an issue of much practical importance. What matters is the respect accorded such agreements and the availability of mechanisms to ensure their effectiveness. *Even if not of the same character as interstate treaties, agreements with indigenous peoples increasingly are acknowledged to be matters of international concern and hence, in their own right, can be said to have an international character.*[142] [Emphasis added.]

As described briefly below, this is not to imply in any way that Indigenous peoples' treaties do not have an international character. Rather, it simply suggests that Indigenous peoples and the government of Canada may well have increased ground on which to reach a common understanding that such treaties are of international character. Whether or not parties agree that Indigenous and other treaties are *exactly* the same, this should not prevent acknowledgement that the treaties of Indigenous peoples are of international character.

Second, it must be recognized that – while there may be highly divergent views – some significant judicial[143] and other opinion[144] has concluded that at least some Indigenous treaties are of an international character. As the U.S. Supreme Court ruled in *Worcester v. Georgia*:

> The Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil, from time immemorial ... *The very term 'nation,' so generally applied to them, means 'a people distinct from the others.'* The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has

---

[142] S. J. Anaya, *Indigenous Peoples in International Law* (Oxford/New York: Oxford University Press, 1996), at p. 142.

[143] *U.S. v. Forty-Three Gallons of Whiskey*, 93 U.S. 188 (1876), at p. 196:

> From the commencement of its existence, the United States has negotiated with the Indians in their tribal condition as nations, dependent, it is true, but still capable of making treaties. This was only following the practice of Great Britain before the Revolution. In Worcester v. The State of Georgia, supra, the court say, "The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense."

[144] U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study on treaties, agreements and other constructive arrangements between States and indigenous populations* (M. Alfonso Martinez, Special Rapporteur, Final Report), E/CN.4/Sub.2/1999/20, 22 June 1999, p. 10, para. 57: "The concept and practice of entering into international agreements – that is, compacts between sovereign entities, whether nations, "tribes" or whatever they chose to call themselves – was widespread among indigenous peoples in the Americas, Aotearoa/New Zealand and elsewhere before the arrival of the European colonizer and continues to be so."

See also J. Tully, note 21, *supra*, at 53: "To gain the consent of indigenous peoples representatives of the Crown are required to enter into negotiations with indigenous peoples as nations equal in status to the Crown. The negotiations are nation to nation, and the treaties that follow from agreement on both sides are, by definition, international treaties."

G. Alfredsson, "The Right of Self-Determination and Indigenous Peoples" in C. Tomuschat (ed.), *Modern Law of Self-Determination* (Boston: Martinus Nijhoff Publishers, 1993) 41, at 47: "These agreements were of an international character until the international status of one of the parties was eliminated by way of unilateral acts of the other party, sometimes by legislation, sometimes by the courts, often by force, and as a rule without indigenous consent."

H. Berman, "Perspectives on American Indian Sovereignty and International Law, 1600 to 1776", in O. Lyons & J.C. Mohawk, eds., *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution*, 1992, at pp. 126-127:

> ... the specific relationship that each nation initially established with the United States was born of the principles and practices of international law and was typically defined through the treaty process.
>
> Obviously then, the links between past and present are of central importance to any analysis of indigenous rights.

> adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. *The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning.* We have applied them to Indians, as we have applied them to the other nations of the earth; they are applied to all in the same sense.[145] [Emphasis added.]

Third, if Indigenous peoples or nations were regarded as sovereign entities by States for the purpose of treaty-making, then the State parties to theses treaties could not subsequently alter without Indigenous consent the status of the Indigenous party to the treaty.[146] Nor could such State parties later determine unilaterally that the treaties they signed with Indigenous nations were no longer of international character. Such actions would violate the principles of good faith and *pacta sunt servanda*.[147]

In *R.* v. *Sioui*, the Supreme Court of Canada relied upon the *Worcester* case[148] and historical evidence to conclude that, when the British entered into treaties of alliance with the Indians, "the Indian nations were regarded in their relations with the European nations which occupied North America as independent nations."[149] Yet Canada's highest court has yet to conclude that the State treaties with the Indigenous nations are of international character. Five years prior to the *Sioui* case, the Supreme Court decided in *R.* v. *Simon*:

> While it may be helpful in some instances to analogize the principles of international treaty law to Indian treaties, these principles are not determinative. An Indian treaty is unique, it is an agreement *sui generis* which is neither created nor terminated according to the rules of international law.[150]

A *sui generis* characterization may be utilized by courts in order to accommodate Indigenous perspectives and practices. However, it should not serve as a pretext for undermining Indigenous peoples' treaty or Aboriginal rights. Such a characterization should never be used in a manner that would weaken or dilute the basic status and rights of Indigenous peoples.[151]

Although the Supreme Court ruled that "Indian treaties" are neither "created" nor "terminated" according to the rules of international law because of the treaty's *sui generis* nature, this does not mean that international law cannot be applied to the treaty. Rather, the Court indicated that analogizing the principles of international treaty rule may be "helpful" in some instances. Thus, the ruling in *Simon* would not appear to preclude characterizing Indigenous treaties as being of "international character" or a matter of "international concern".

[145] *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832), at 559 *per* Marshall C.J.

[146] B. Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law" in P. Alston, ed., *Peoples' Rights* (Oxford: Oxford University Press, 2001) 69, at 100:

> Accounts and memories of an earlier era of political independence are widespread among indigenous peoples. In many cases this independence was initially recognized by the aspiring colonial power. Treaties between indigenous peoples and colonizing or trading states, made over several centuries, were commonly premissed on the capacity of both parties to act. ... The legal basis under which this independence was lost was often not accepted by the indigenous group involved, and even under the legal principles of contemporaneous international law espoused by the colonizers it may have been tainted by illegality.

[147] I.M. Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd ed. (Manchester: Manchester University Press, 1984), at pp. 119-120:

> The principle of good faith underlies the most fundamental of all the norms of treaty law – namely, the rule *pacta sunt servanda*. Indeed, Article 26 of the Convention specifically establishes that every treaty in force is binding upon the parties to it and must be performed by them "in good faith". If 'good faith' is required of the parties in relation to the observance of treaties, logic demands that 'good faith' be applied to the interpretation of treaties. ...
>
> ...
>
> The principle of good faith applies to the entire process of interpretation, including the examination of the text, the context and subsequent practice.

See also *New Zealand Maori Council* v. *Attorney General*, [1987] 1 N.Z.L.R. 641 (C.A.), at 682, where, in the context of government action under the Treaty of Waitangi, Richardson J. referred to the international law doctrine of good faith, as well the *U.N. Charter*, Art. 2 (Principles) and the *Vienna Convention on the Law of Treaties*, Arts. 26 (*pacta sunt servanda*) and 31(1) (treaties shall be interpreted in good faith).

[148] *Worcester* v. *Georgia*, note 145, *supra*, at pp. 548-549: "Such was the policy of Great Britain towards the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical exposition of the charters she had granted: she considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged."

[149] *R.* v. *Sioui*, [1990] 1 S.C.R. 1025, at p. 1053.

[150] *R.* v. *Simon* [1985] 2 S.C.R. 387, at p. 404.

[151] In this context, consider the most recent position of the government of Canada. See Canada, "Perspective on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples", note 133, *supra*, p. 16:

> Due to the *sui generis* nature of treaties between states and indigenous groups and the variety and complexity of treaties, agreements and arrangements, international monitoring and dispute resolution is not appropriate.

Fourth, in the event of an ambiguity or doubtful expression, Indigenous treaties should be liberally construed and resolved in favour of the First Nations and Metis signatories.[152] However, unilateral alteration of the international status or character of a treaty – or the status of the Indigenous party concerned – is not a question of ambiguity. Rather, it appears to be a deliberate and unauthorized alteration of the original understanding of the parties.[153] This constitutes an illegitimate modification of the historical or legal context in which the treaty was signed. Such "sharp dealing" is prohibited by Canadian courts[154] and clearly brings dishonour to the Crown.

Fifth, it would be unfair to deprive Indigenous peoples of any international[155] recourse in relation to their treaties and treaty rights, regardless of the circumstances.156 In many instances, domestic remedies may be unfair or otherwise inadequate.[157] Indigenous peoples have the right to an effective remedy,[158] especially when there are human rights issues involved.

Sixth, even if the domestic law in Canada were to undermine or deny the treaty rights of Indigenous peoples, there could still exist international obligations that the Canadian government would be bound to fulfill. According to a long and well-established rule, States cannot invoke their internal law in order to circumvent their obligations under international law.[159]

Seventh, in an era of globalization when a vast range of issues are being regulated or otherwise addressed at the international level, it would make little sense for the government of Canada to seek to contain Indigenous

[152] See, e.g., *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29. See also *R. v. Marshall* (No. 1), [1999] 3 S.C.R. 456, para. 78: "Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the Aboriginal signatories".

[153] *Study on treaties, agreements and other constructive arrangements between States and indigenous populations* (M. Alfonso Martinez, Special Rapporteur, Final Report), note 144, *supra*, at p. 43, para. 271: "The Special Rapporteur is of the opinion that those instruments indeed maintain their original status and continue fully in effect, and consequently are sources of rights and obligations for all the original parties to them (or their successors), who shall implement their provisions in good faith."

[154] *Sparrow v. The Queen*, [1990] 1 S.C.R. 1075, at p. 1107, Dickson C.J.C.: "[T]he honour of the Crown is always involved and no appearance of 'sharp dealing' should be sanctioned," quoting *R. v. Taylor and Williams* (1981), 34 O.R. (2d) 360 at 367, [1981] 3 C.N.L.R. 114 (C.A.).

[155] U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, Forty-eighth session, E/CN.4/Sub.2/1996/17, 24 May 1996, Annex, para. 4:

> Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

[156] U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples and their relationship to land: Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes*, E/CN.4/Sub.2/2001/21, 11 June 2001, p. 17, para. 49:

> The denial of any remedy under international law is inconsistent with the use of treaties as a legal mechanism and with the status of indigenous peoples as subjects of international law. Thus, indigenous peoples appear to be unique in being denied legal remedies for violation of their rights where the State abrogates or violates a treaty between the State and an indigenous nation, tribe or peoples.

[157] R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), at 96: "It becomes unsustainable to regard the treatment of one's own nationals as matters falling essentially within domestic jurisdiction, and thus unreviewable by the international community."

[158] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N.G.A. Res. 53/144, U.N. Doc. A/RES/53/144, 8 March 1999, Annex, Art. 9:

> 1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

Charter of Paris for a New Europe: A New Era of Democracy, Peace and Unity, November 21, 1990, reprinted in (1991) 30 I.L.M. 190: "We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights."

[159] H.M. Kindred *et al.*, eds., *International Law: Chiefly as Interpreted and Applied in Canada*, 6th ed. (Toronto: Emond Montgomery Publications, 2000), at p. 111: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith. Furthermore, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

See also Inter-American Court of Human Rights, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (arts. 1 and 2, American Convention on Human Rights), Advisory Opinion OC-14/94 of December 1994, Series A No. 14, para. 35:

> Pursuant to international law, all obligations imposed by it must be fulfilled in good faith; domestic law may not be invoked to justify nonfulfillment. These rules may be deemed to be general principles of law and have been applied by the Permanent Court of International Justice and the International Court of Justice even in cases involving constitutional provisions.

peoples' treaties within the domestic context. Such an approach would run counter to the practice and growing trend in international affairs. It would also be inconsistent with the increased affirmation of Indigenous peoples as international actors and subjects of international law.[160]

Eighth, it cannot be argued that the current definition of "treaty" in the 1969 *Vienna Convention on Treaties* precludes Indigenous peoples' treaties, since the definition refers to international agreements "concluded between States".[161] Art. 4 of the *Convention* makes clear that it applies "only to treaties ... concluded by States after the entry into force of the present Convention with regard to such States." In addition, Art. 3 stipulates that the *Convention* does not affect the legal force of international agreements concluded between States and other subjects of international law.[162]

Ninth, in the past, some Indigenous treaties were classified without distinction together with other international treaties.[163] Therefore, it could hardly be argued by Canada that Indigenous treaties were always of a domestic character.

Tenth, if Indigenous treaties are solely of a domestic character, how can one explain why the U.S. Congress adopted a law in 1871 providing: "No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty"[164]?

Based on the above considerations, the following position of the government of Canada to in effect "domesticate" Indigenous peoples' treaties must be rejected:

> We cannot re-write history, and in only rare instances can indigenous peoples be restored fully to their situations prior to colonisation or other historic events. It is not therefore helpful to suggest that agreements between indigenous peoples and States can or should be characterized as international treaties in the sense of agreements between sovereign entities. It does not reflect the domestic or international legal or practical realities of those agreements.[165]

---

[160] *Study on treaties, agreements and other constructive arrangements between States and indigenous populations* (M. Alfonso Martinez, Special Rapporteur, Final Report), note 144, *supra*, at p. 18, para. 112:

> In the course of history, the newcomers then nevertheless attempted to divest indigenous peoples, as pointed out above, of their sovereign attributes, especially jurisdiction over their lands, recognition of their forms of societal organization, and their status as subjects of international law.

Panel, "Are Indigenous Peoples Entitled to International Juridical Personality?" [1985] Proc. A.S.I.L. 189, at 196 (remarks of Hurst Hannum): "... indigenous peoples ... without question possess some form of international legal personality."

[161] *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679 (1969), Art. 2.1(a): "'treaty' means an international agreement concluded between States in written form and governed by international law ..."

[162] *Study on treaties, agreements and other constructive arrangements between States and indigenous populations* (M. Alfonso Martinez, Special Rapporteur, Final Report), note 144, *supra*, p. 10, para. 55: "... a narrow definition of treaties and treaty-making would impede (or even preclude) any proper account of indigenous views on these issues, simply because of the widely held rationale that indigenous peoples are not "States" in the current sense of the term in international law, regardless of their generally recognized status as sovereign entities in the era of the Law of Nations."

[163] B. Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law" in P. Alston, ed., *Peoples' Rights* (Oxford: Oxford University Press, 2001) 69, at 100: "The Treaty of Waitangi, for instance, was one of many such agreements included in standard nineteenth-century European treaty series." And at p. 100, n. 75: "Many such treaties [with Indigenous peoples] are collected and printed in a separate section in Clive Parry's *Consolidated Treaty Series* (published in the latter part of the twentieth century), but often the original sources intimated no qualitative distinction of this sort."

See also B. Kingsbury, "The Treaty of Waitangi: some international law aspects" in I. Kawharu, (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989) 121, at p. 149, n. 6:

> It is noteworthy that the semi-official *Index to British Treaties 1101-1968* (ed. Parry and Hopkins - London: HMSO, 1970) makes no distinction as to counterparts: treaties concluded with indigenous peoples are interspersed with treaties with European States. The same is true for British and Foreign Papers, and for the treaty series, Hertslet and Martens. Martens was criticized for omitting treaties with indigenous peoples from his first few volumes, and subsequently sought to rectify the omission.

[164] Act of March 3, 1871, embodied in section 2079 of the Revised Statutes. In this regard, see V. Deloria, Jr., "The Application of the Constitution to American Indians" in O. Lyons & J.C. Mohawk, eds., *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishers, 1992) 281, at p. 283:

> The American Revolution left three major political competitors in North America: the United States, Great Britain, and Spain. Since the English and Spanish continued to treat Indian nations as nations, the United States had no choice but to accept and recognize the Indian nations as nations capable of entering into treaty relationships.

[165] Canada, "Perspectives on Treaties, Agreements and other Constructive Arrangements Between States and Indigenous Peoples", note 133, *supra*, p. 14.

While every treaty should be considered on its own merits, it must be concluded that Indigenous peoples' treaties are matters of international concern. Moreover, in light of the status[166] of Indigenous peoples and the other reasons listed above, such treaties can also be viewed as having an international character. Their character need not be identical in every aspect to other international treaties or conventions. However, like numerous other international treaties implemented within States, Indigenous treaties can well possess both an international and domestic character.[167] They are dynamic, living agreements that must be flexibly interpreted. Indigenous peoples and their treaties require both constitutional and international space to thrive.

As the Royal Commission on Aboriginal Peoples describes:

> Treaty relationships will evolve organically, but there must be no expectation that one world view will disappear in the process. On the contrary, treaty making legitimizes and celebrates the distinctiveness of the parties while establishing their bonds of honour and trust.[168]

CONCLUSIONS AND RECOMMENDATIONS

The overall conclusion of this paper is that international human rights norms relevant to First Nations and Metis peoples in Saskatchewan should be incorporated into the reforms for improving the administration of justice in the province. Use of these norms is wholly appropriate for this vital purpose.

In a democratic society, the administration of justice is "the primary guarantor of the protection of human rights."[169] Moreover, the federal, provincial, First Nations and Metis governments have a "duty to guarantee respect for human rights".[170] In the context of Indigenous peoples, this requires the use of international human rights norms that reflect the perspectives and values of the peoples concerned. Application of such standards should also respect their legal status as distinct self-determining peoples and their fundamental collective[171] human rights. This proposed approach would seek to ensure reforms that would "better reflect the values and inherent strengths of Aboriginal communities", as called for by the Commission's mandate.

---

[166] Indigenous peoples are today regaining their rightful status as subjects of international law. As international actors, they are actively participating in standard-setting and other international forums, utilizing international complaints processes, and engaging in international relations with a wide range of governments and Indigenous peoples. They are contributing extensively to international peace and cooperation. These are all positive manifestations of external self-determination. See, e.g., D. Sambo Dorough, "Recognition of the Right to Self-Determination of Indigenous Peoples: The Future" in International Centre for Human Rights and Democratic Development, *Seminar: Right to Self-Determination of Indigenous Peoples* (Montreal: ICHRDD, 2002) 33 at p. 44-45:

> Throughout 1997 ... a troubling discussion was prompted by States concerning the notion of "internal" and "external" self-determination. This false dichotomy has been set up by States in order to confine indigenous peoples right to self-determination to one of domestic or State prescription. ... We, ourselves, are expressing our worldviews and perspectives on the international plane, and making our voices heard outside of or external to our own communities. And, this is one aspect of the right to self-determination.

In today's complex world, aspects of "internal" and "external" self-determination are increasingly interrelated and interdependent. It makes little sense for States, such as Canada, to limit Indigenous treaties or other Indigenous matters to a domestic context. See also E. [illegible], "The Basic Collective Right to Self-Determination of Peoples and Nations as a Pre-Requisite to Peace" (1990) 8 N.Y.L. Sch. J. of H. Rts. 49, at p. 55: "Both the internal and external aspects of the right to self-determination of peoples and nations are constitutive and inseparable elements of this basic collective human right."

[167] B. Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79 Can. Bar Rev. 196, at p. 207:

> This inquiry touches on the much-debated question whether Indian treaties, considered as a class, are international agreements or domestic agreements governed by Canadian law. However, as traditionally framed, this question poses false alternatives. It seems unlikely that all agreements styled "Indian treaties" share exactly the same legal character. A different conclusion is suggested by the widely varying circumstances in which historic treaties were concluded and the disparate purposes they served. In any case, there is reason to think that some treaties constitute both international and domestic instruments, producing legal effects at both levels. International law and Canadian law are distinct and potentially overlapping systems of rules. On occasion, both systems may recognize certain transactions as valid and attach legal consequences to them, each within its proper sphere.

[168] Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(1), p. 54.

[169] See text accompanying note 30, *supra*.

[170] See text accompanying note 31, *supra*, and the ensuing discussion.

[171] Emphasis is placed here on collective rights of Aboriginal peoples and nations, since these human rights are predominantly collective. At the same time, the individual rights of their citizens or members would be an integral part of any human rights approach. See, e.g., draft U.N. *Declaration on the Rights of Indigenous Peoples*, Art. 2: "Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity."

See also Race Discrimination Commissioner, "Alcohol Report", Human Rights and Equal Opportunity Commission, 1995, Canberra, Australia, p. 27:

> It is often the case that the protection and promotion of collective rights is a pre-requisite for the exercise and enjoyment of individual rights. The right of an Aboriginal ... person to protect and enjoy his or her culture, for example, cannot be exercised if an indigenous culture is struggling to survive within the majority culture and the indigenous community has no right to protect and develop its culture. If rights are not granted collectively to indigenous peoples which enable them to defend their culture, the practice of their religion and the use of their language, the result is unequal and unjust treatment.

In order to better reflect and reinforce Indigenous values and inherent strengths, it is critical to ensure respect for both Aboriginal and treaty rights in any framework for the administration of justice. Clearly, human dignity and human rights are essential elements in any pathway or framework for ensuring equality, non-discrimination, fairness and justice for Aboriginal peoples in Saskatchewan and elsewhere in Canada.

Achieving these objectives is likely to be an ongoing challenge. It requires a human rights culture that is relevant to Aboriginal peoples to be entrenched in the administration of justice. It also requires a principled framework that is inclusive of Aboriginal peoples, communities and institutions – one that fully accommodates their essential roles in the achievement of a responsive and fair justice system. Effective implementation strategies[172] and concrete measures will be necessary both in the short and longer term.

In ensuring a principled framework, the Commission and the Implementation Vehicle may wish to consider the following elements:

1. **Main pillars for the administration of justice.** In relation to Aboriginal peoples, it would be useful to identify the main pillars for the administration of justice in Saskatchewan (*E.g.*, equality, prevention, inclusion, fairness). This would be accompanied by a broader framework that would include a number of key elements, such as respect for human rights, non-discrimination, human dignity, participation of Aboriginal peoples and communities, training, etc.[173]

2. **Self-determination a central element.** The right of self-determination of First Nations and Métis peoples in Saskatchewan should be a central and core element in the overall reforms relating to the administration of justice. As described in this paper, a similar emphasis was strongly recommended by a Royal Commission and another government-appointed inquiry in Australia.[174] Moreover, in regard to the right of Aboriginal peoples to self-determination, the U.N. Human Rights Committee has urged the government of Canada "to report adequately on implementation of article 1 of the [Civil and Political Rights] Covenant" in its next periodic report.[175]

   A vital aspect of the right of Indigenous peoples to self-determination pertains to natural resources.[176] In this context, the principle of prior, free and informed consent is a crucial standard. Other commissions examining justice issues relating to Aboriginal peoples have also identified natural resources as a key matter.[177]

---

[172] Such an approach is already contemplated in Saskatchewan. See Commission on First Nations and Métis Peoples and Justice Reform, "Terms of Reference", para. 3: "The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations."

[173] A similar approach, consistent with and sensitive to the human rights of Indigenous peoples, has recently been recommended in regard to natural resources and sustainable development. See E. Salim, *Striking a Better Balance: The Extractive Industries Review* (World Bank, 2003), Vol. I, p. 11:

> The international community's recent focus on poverty alleviation involves the four main pillars of sustainable development: improved social conditions, environmental protection, economic progress, and good governance. This requires a broader framework of development that has many elements. Among them are the rule of law, respect for and protection of human rights, free access to information about government and business activities, a grievance mechanism, social and environmental considerations in policymaking and project implementation, and provision for the vulnerable of the world – the poorest among us, women, children and indigenous peoples.

[174] See text accompanying note 94, *supra*, and the ensuing discussion.

[175] Human Rights Committee, note 107, *supra*, para. 7.

[176] T. Moses, "The Right of Self-Determination and Its Significance to the Survival of Indigenous Peoples", in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Abo, Finland: Institute for Human Rights, Abo Akademi University, 2000) 155, at p. 161:

> We have the right to benefit from the resources of the land as an expression of our right of self-determination. We may not be denied a means of subsistence; moreover, we may not be denied our own means of subsistence. We have the right to use our lands and waters to live by our own means as we always have, and by whatever means we deem necessary to address contemporary challenges. Self-determination protects our right to subsist, and it protects as well our right to subsist based on our own values and perspectives. In view of the profound relationship we have with our lands, resources and environment, subsistence for indigenous peoples has vital economic, social, cultural, spiritual and political dimensions.

3. **Utilization of international human rights norms.** International human rights norms relating to Indigenous peoples should be broadly incorporated on an ongoing basis in implementation strategies concerning, or impacting upon, the administration of justice.[178] Indigenous peoples, through their representatives, are playing an increasingly major role in human rights standard-setting processes at the international level. This ongoing involvement is enhancing the importance and relevance of existing and emerging norms.

   In particular, the *U.N. Declaration on the Rights of Indigenous Peoples* has received the approval of numerous Indigenous and non-Indigenous international human rights experts and others. The *Declaration* should be actively utilized to ensure uplifting norms. Clearly, the incorporation of international norms would only be appropriate if they serve to raise and reinforce existing standards in Canada.[179]

4. **Importance of human rights education.** In implementing a human rights approach, it would be essential to devise and implement human rights education programmes in Saskatchewan. If not already in place, human rights information and education pertaining to Aboriginal peoples would be beneficial for the public and media in general. Special attention should be accorded to police, lawyers, judges, government officials and all those who work in or influence the justice system.[180] Human rights education is also important on an ongoing basis in Aboriginal communities. The great work of the Office of the Treaty Commissioner must be continued in this regard.

   Human rights should be an essential aspect of learning for children in schools.[181] Human rights education, if effective, should serve to promote tolerance, respect and understanding.[182] In particular, it is important for people of all ages to appreciate that Aboriginal and treaty rights are human rights that must be respected.

---

[177] See, for example, Manitoba, Aboriginal Justice Implementation Commission, *Final Report and Recommendations* (Winnipeg: Government of Manitoba, 2001) (Commissioners P. Chartrand & W.J. Whitecloud), Annex, AJIC Recommendation 4.1:

> Any future, major, natural resource developments not proceed, unless and until agreements or treaties are reached with the Aboriginal people and communities in the region, including the Manitoba Metis Federation and its locals and regions, who might be negatively affected by such projects, in order to respect their Aboriginal, treaty, or other rights in the territory concerned.

[178] See also the recommendations of the Royal Commission on Aboriginal Peoples, note 20, *supra*, vol. 2(1), p. 174, where it is proposed, *inter alia*, that: the government of Canada "enact legislation affirming the obligations it has assumed under international human rights instruments ... in so far as these obligations pertain to the Aboriginal peoples of Canada"; recognize that its fiduciary relationship with Aboriginal peoples requires it to enact legislation to give Aboriginal peoples access to a remedy in Canadian courts for breach of Canada's international commitments to them"; and "expressly provide in such legislation that resort may be had in Canada's courts to international human rights instruments as an aid to the interpretation of the *Canadian Charter of Rights and Freedoms* and other Canadian law affecting Aboriginal peoples".

[179] *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, note 155, *supra*, Annex, para. 3:

> The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable.

[180] "Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education - lessons for life", in *Note by the Secretary-General Addendum*, A/51/506/Add.1, 12 December 1996, Appendix, para. 24:

> Special attention shall be given to the training of police, prison officials, lawyers, judges, teachers and curriculum developers, the armed forces, international civil servants, development officers and peacekeepers, non-governmental organizations, the media, government officials, parliamentarians and other groups that are in a particular position to effect the realization of human rights.

[181] *Convention on the Rights of the Child*, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/RES/44/49 (1990), adopted by the General Assembly in resolution 44/25 of 20 November 1989 and entering into force on 2 September 1990, Art. 29, para. 1(b):

> 1. States Parties agree that the education of the child shall be directed to:
>
> (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.

[182] See, e.g., draft *U.N. Declaration on the Rights of Indigenous Peoples*, Art. 16:

> Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.
>
> States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

See also *Indigenous and Tribal Peoples Convention, 1989* (No. 169), Art. 31:

> Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

5. **Treaties and treaty rights.** In order to comprehensively address existing treaty concerns of First Nations and Métis peoples in Saskatchewan, it is important to ensure that adequate processes are in place for these purposes. In addition, the sacred nature and historical and contemporary significance of treaties should be an integral part of human rights education. In addition, specific measures would be necessary to ensure that treaties continue to be living and dynamic instruments – respected by governments, corporations and the general public and responsive to changing circumstances.

6. **Indigenous peoples participation.** Consistent with the right of self-determination, the full and effective participation of the First Nations and Métis peoples must be an integral element in any proposed reforms. Such involvement and collaboration is necessary – not only for the administration of justice measures that will be devised and implemented, but also for all of the elements listed above. In addition, from a Canadian constitutional perspective, it should be made clear that the "federal principle"[183] includes Aboriginal peoples and their governments, as well as federal and provincial governments.[184] For a wide range of purposes, Indigenous participation should be based on both the right of self-determination and the federal principle.[185]

   In regard to the nature and use of international human rights norms, there are numerous First Nations and Metis leaders in Canada who have extensive experience and who have actively participated for decades in international forums. Governments should make use of the knowledge and expertise of these individuals.

It is clear from the analyses and conclusions in this paper that a rights-based approach is essential. This would necessarily include international human rights norms. Such a perspective and methodology are viewed as especially appropriate when human rights issues are involved.[186] Based on a rights-based approach, the U.N. High Commissioner for Human Rights describes an adequate national protection system in the following terms:

---

[183] K.C. Wheare, *Federal Government*, 4th ed., (1963), at p. 10, where the federal principle is described as "the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent."

[184] *Reference re Secession of Quebec*, note 76, *supra*, para. 57:

> there can be little doubt that the principle of federalism remains a central organizational theme of our Constitution. Less obviously, perhaps, but certainly of equal importance, federalism is a political and legal response to underlying social and political realities.

See also *A.G. Canada v. Coon Come*, [1991] R.J.Q. 922 (C.A.), at p. 939 (*per* LeBel J. on behalf of the court), where is indicated that s. 35 of the *Constitution Act, 1982* introduced a third element in the functioning of Canadian federalism; and B. Slattery, "The Organic Constitution: Aboriginal Peoples and the Evolution of Canada", (1995) 34 Osgoode Hall L.J. 101 at p. 111:

> ... aboriginal treaties not only contributed in a general way to the evolution of the Constitution, but also supplied part of its federal structure. This situation sometimes described as "treaty federalism&, has now been formally recognized and consolidated in section 35 of the *Constitution Act, 1982*.

[185] T. Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (New York: Oxford University Press, 1999), at p. 53: "Indigenous empowerment involves achieving a relationship between peoples founded on the principle of autonomy and interdependence. To accommodate indigenous notions of nationhood and cease its interference in indigenous communities, the state need only refer to the federal principle."

B. Morse, *How Would Quebec's Secession Affect Aboriginal Peoples and Aboriginal Rights?*, (1999) 11 N.J.C.L. 107, at p. 111: "The Supreme Court stated [in the *Quebec Secession Reference*] that the federalism principle, in conjunction with the democratic principle, gave rise to a reciprocal obligation placed on all parties to Confederation to negotiate constitutional changes ... The Court stated that *maintaining federalism ensures a balance of power among the federal and provincial governments, as well as arguably the aboriginal peoples*, all of which would be instrumental in participating in negotiations." [emphasis added]

[186] U.N. Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World, E/CN.4/2003/14, 26 February 2003, p. 14, para. 53:

> **The rights-based approach must be the starting point for all our endeavours, whatever our spheres of operation: trade, finance, development, security in both the public and private sectors. In a sense, this is an approach that involves human rights strategies of governance, namely, that we take the basic human rights as the starting point for governmental programmes and the programmes of national, regional and international institutions. What is at issue is a question of conscience: people matter, and the way we demonstrate this is by upholding the international minimum standards of protection of their human rights. [emphasis in original]**

See also B. McLachlin, "The Supreme Court and the Public Interest" (2001) 64 Sask. L. Rev. 309, at pp. 313-314, where the Supreme Court Chief Justice refers to the "rights-based nature of modern democracy" in Canada; and United Nations Development Program, Human Development Report 2000 (Oxford: Oxford University Press, 2000), at pp. 29-31.

> An adequate national protection system is one in which international human rights norms are reflected in the national constitution and in national legislation; in which the courts can apply international human rights norms and jurisprudence; in which there is human rights education in the schools; in which there are specialized institutions such as human rights commissions or ombudspersons; and in which vulnerable parts of the population are watched over in order to detect and head off problems before they occur.[187]

In our respectful view, the above basic elements would be most appropriate for the Saskatchewan context and the First Nations and Métis peoples concerned.

---

[187] U.N. Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World* [illegible] 1996, *supra*, para. 43

LIST OF AUTHORITIES

Legislation

Canadian Charter of Rights and Freedoms, in Constitution Act, 1982, Schedule B to the *Canada Act, 1982*, (U.K.), 1982, c. 11, Part I

Constitution Act, 1982, Schedule B to the *Canada Act*, 1982, (U.K.), 1982, c. 11

Indian Act, R.S.C. 1985, c. I-5, as amended

Books, articles, etc.

T. Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (New York: Oxford University Press, 1999)

G. Alfredsson, "The Right of Self-Determination and Indigenous Peoples" in C. Tomuschat, (ed.), *Modern Law of Self-Determination* (Boston: Martinus Nijhoff Publishers, 1993)

S.J. Anaya, "Canada's Fiduciary Obligation Toward Indigenous Peoples in Quebec under International Law in General", in *Canada's Fiduciary Obligation to Aboriginal Peoples in the Context of Accession to Sovereignty by Quebec* (Ottawa: Minister of Supply and Services Canada, 1995), vol. 1, International Dimensions, 9

S. J. Anaya, *Indigenous Peoples in International Law* (Oxford/New York: Oxford University Press, 1996)

S.J. Anaya, "Indigenous Rights Norms in Contemporary International Law" (1991) 8 Ariz. J. Int'l & Comp. Law 1

A. Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law" (1999) 40 Harv. Int'l L.J. 1

A. Armitage, *Comparing the Policy of Assimilation: Australia, Canada, and New Zealand* (Vancouver: University of British Columbia Press, 1995)

A. Aust, *Modern Treaty Law and Practice* (New York: Cambridge University Press, 2000)

R. Barsh, "Indigenous Peoples in the 1990s: From Object to Subject of International Law?", (1994) 7 Harvard Human Rts. J. 33

A.F. Bayefsky, International Human Rights Law: Use in Canadian Charter of Rights and Freedoms Litigation (Toronto: Butterworths, 1992)

I. Brownlie, 5th ed., *Principles of Public International Law* (Oxford: Clarendon Press, 1998)

Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: November 1998)

A. Cassese, *Self-Determination of Peoples: A Legal Appraisal* (Cambridge: Cambridge University Press, 1995

A. Cassese, "The Self-Determination of Peoples", in L. Henkin, (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), 92

C.P. Cohen, ed., Human Rights of Indigenous Peoples (Ardsley, N.Y.: Transnational Publishers, 1998)

I. Cotler & F.P. Eliadis, (eds.), *International Human Rights Law: Theory and Practice* (Montreal: Canadian Human Rights Foundation, 1992) 63

V. Deloria, Jr., "The Application of the Constitution to American Indians", in O. Lyons & J.C. Mohawk, eds., *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishers, 1992) 281

K. Doehring, "Self-Determination" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994)

D. Sambo Dorough, "Recognition of the Right to Self-Determination of Indigenous Peoples: The Future" in International Centre for Human Rights and Democratic Development, *Seminar: Right to Self-Determination of Indigenous Peoples* (Montreal: ICHRDD, 2002)

R.J. Epstein, "The Role of Extinguishment in the Cosmology of Dispossession" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes* (The Hague: Kluwer Law International, 2002) 45

T. Franck, "The Emerging Right to Democratic Governance", (1992) 86 Am. J. Int'l L. 46

D. Greschner, "The Purpose of Canadian Equality Rights" (2002) 6 Rev. Const'l Studies 291

J.Y. Henderson, "Interpreting *Sui Generis* Treaties", (1997) 36 Alta. L. Rev. 46

J.Y. Henderson, M.L. Benson & I.M. Findlay, *Aboriginal Tenure in the Constitution of Canada* (Toronto: Carswell, 2000)

R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994)

B. Hocking, (ed.), *International Law and Aboriginal Human Rights* (Toronto: Carswell, 1988)

P. Hughes, "Recognizing Substantive Equality as a Foundational Constitutional Principle" (1999) 22 Dalhousie L.J. 5

P. Joffe, "Assessing the Delgamuukw Principles: National Implications and Potential Effects in Québec", (2000) 45 McGill L.J. 155

P. Joffe & M.E. Turpel, *Extinguishment of the Rights of Aboriginal Peoples: Problems and Alternatives*, A study prepared for the Royal Commission on Aboriginal Peoples, 3 vols., 1995

J.P. Kastrup, "The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective" (1997) 32 Tex. Int'l L.J. 97

H.M. Kindred *et al.*, eds., *International Law: Chiefly as Interpreted and Applied in Canada*, 6th ed. (Toronto: Emond Montgomery Publications, 2000)

B. Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law" in P. Alston, ed., *Peoples' Rights* (Oxford: Oxford University Press, 2001) 69

B. Kingsbury, "The Treaty of Waitangi: some international law aspects" in I. Kawaharu, (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989) 121

G.V. LaForest, "The Expanding Role of the Supreme Court of Canada in International Issues", (1996) 34 Can. Y. I.L. 89

M.A. Luz & C.M. Miller, "Globalization and Canadian Federalism: Implications of the NAFTA's Investment Rules" (2002) 47 McGill L.J. 951

R. McCorquodale, "Human Rights and Self-Determination" in M. Sellers, ed., *The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples* (Oxford/Washington, D.C.: Berg, 1996) 9

R. McCorquodale, "Self-Determination: A Human Rights Approach" (1994) 43 Int'l & Comp. L.Q. 857

B. McLachlin, Chief Justice of Supreme Court of Canada, "Aboriginal Rights: International Perspectives", Order of Canada Luncheon, Speech, Canadian Club of Vancouver, Vancouver, British Columbia, February 8, 2002

B. McLachlin, "The Supreme Court and the Public Interest" (2001) 64 Sask. L. Rev. 309

K. Mills, *Human Rights in the Emerging Global Order: A New Sovereignty?* (New York: St. Martin's Press, 1998)

B. Morse, How Would Quebec's Secession Affect Aboriginal Peoples and Aboriginal Rights?, (1999) 11 N.J.C.L. 107

T. Moses, "The Right of Self-Determination and Its Significance to the Survival of Indigenous Peoples", in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Abo, Finland: Institute for Human Rights, Abo Akademi University, 2000) 155

R. Müllerson, "Reflections on the Future of Civil and Political Rights" in B.H. Weston & S.P. Marks, eds., *The Future of International Human Rights* (Ardsley, New York: Transnational Publishers, 1999) 225

Panel, "Are Indigenous Peoples Entitled to International Juridical Personality?" [1985] Proc. A.S.I.L. 189

F. Przetacznik, "The Basic Collective Right to Self-Determination of Peoples and Nations as a Pre-Requisite to Peace" (1990) 8 N.Y.L.Sch. J. of H. Rts. 49

P. Reuter, *Introduction to the Law of Treaties* (London/New York: Pinter Publishers, 1989)

F. Rigaldies and J. Woehrling, "Le juge interne canadien et le droit international" (1980) 21 C. de D. 293

K. Roach, *Constitutional Remedies in Canada*, (Aurora, Ontario: Canada Law Book, 2002)

L.I. Rotman, *Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada* (Toronto: University of Toronto Press, 1996)

P. Russell, "The Supreme Court Ruling, A Lesson in Democracy", Cité Libre, English ed., vol. 26, no. 4, October-November, 1998, 29

D. Sambo, "Indigenous Peoples and International Standard-Setting Processes: Are State Governments Listening?", (1993) 3 Transnat'l L. & Contemp. Probs. 13

D. Sanders, Collective Rights, (1991) 13 Hum. Rts. Q. 368

W.A. Schabas, "Twenty-Five Years of Public International Law at the Supreme Court of Canada" (2000) 79 Can. Bar Rev. 174

C. Scott, Indigenous Self-Determination and Decolonization of the International Imagination: A Plea, (1996) 18 Human Rts. Q. 814

I. Shearer, *Starke's International Law*, 11 ed. (London: Butterworths, 1994)

C.-A. Sheppard, "The Cree Intervention in the Canadian Supreme Court Reference on Québec Secession: A Subjective Assessment" (1999) 23 Vermont L. Rev. 845

B. Simma & P. Alston, "The Sources of Human Rights Law: Custom, Jus Cogens and General Principles" (1992) 12 Aust. Y.B.I.L. 82

I.M. Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd ed. (Manchester: Manchester University Press, 1984)

B. Slattery, "Making Sense of Aboriginal and Treaty Rights", (2000) 79 Can. Bar Rev. 196

B. Slattery, "The Organic Constitution: Aboriginal Peoples and the Evolution of Canada", (1995) 34 Osgoode Hall L.J. 101

G. Slyz, "International Law in National Courts" in T.M. Franck & G.H. Fox, eds., *International Law Decisions in National Courts* (N.Y.: Transnational Publishers, 1996) 71

L.B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 Am. Univ. L. Rev. 1

R. Stavenhagen, "Self-Determination: Right or Demon?" in D. Clark & R. Williamson, eds., *Self-Determination: International Perspectives* (New York: St. Martin's Press, 1996) 1

R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights,* (Tokyo: United Nations Univ. Press, 1990)

Symposium, The Human Rights of Indigenous Peoples, (1982) 36 Colum. J. Int'l Aff. 1-161

S.J. Toope, "Legal and Judicial Reform through Development Assistance: Some Lessons" (2003) 48 McGill L.J. 357

S.J. Toope, "The Uses of Metaphor: International Law and the Supreme Court of Canada" (2001) 80 Can. Bar Rev. 534

R. Torres, The Rights of Indigenous Populations: The Emerging International Norm, (1991) 16 Yale J. Int'l L. 127

J. Tully, "The Struggles of Indigenous Peoples for and of Freedom" in D. Ivison, P. Patton, & W. Sanders, eds, *Political Theory and the Rights of Indigenous Peoples* (Cambridge/New York: Cambridge University Press, 2000)

M.E. Turpel, Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition, 25 Cornell Int'l L. J. 579

K.C. Wheare, *Federal Government*, 4th ed. (1963)

Government policies, studies, reports

Australian Human Rights and Equal Opportunities Commission, *Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney, 1997), Annex 9, Recommendations

Canada, Canada in the World, Canadian Foreign Policy Review, 1995 available at http://www.dfait-maeci.gc.ca/foreign_policy/cnd-world/menu-en.asp

Commission on First Nations and Métis Peoples and Justice Reform, *Building on Success, Interim Report – May 30, 2002*, Saskatchewan

Indian Affairs and Northern Development, *Aboriginal Self- Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Ottawa: Minister of Public Works and Government Services Canada,1995)

Indian Affairs and Northern Development, *Gathering Strength – Canada's Aboriginal Action Plan* (Ottawa: Minister of Public Works and Government Services, 1997)

P. Linn, *Report of the Saskatchewan Indian Justice Review Committee*, Saskatchewan Justice, Regina, 1992

P. Linn, *Report of the Saskatchewan Métis Justice Review Committee*, Saskatchewan Justice, Regina, 1992

Manitoba, Aboriginal Justice Implementation Commission, *Final Report and Recommendations* (Winnipeg: Government of Manitoba, 2001) (Commissioners P. Chartrand & W.J. Whitecloud)

Race Discrimination Commissioner, "Alcohol Report", Human Rights and Equal Opportunity Commission, 1995, Canberra, Australia

Reply By the Attorney General of Canada to Questions Posed By the Supreme Court of Canada at para. 8, online: QL (SCQR), in the matter of *Reference re Secession of Québec*, [1998] 2 S.C.R. 217

Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *National Report* (Elliott Johnston, Commissioner), Vol. 1, (Canberra, Australia: AGPS, 1991)

Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996)

Statements of the Canadian Delegation, Commission on Human Rights, 53rd Sess., Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995, 2nd Sess., Geneva, 21 October - 1 November 1996, cited in *Consultations Between Canadian Aboriginal Organizations and DFAIT in Preparation for the 53rd Session of the U.N. Commission on Human Rights, February 4, 1997* (statement on art. 3, right to self-determination, on October 31, 1996)

U.S. National Security Council, "The National Security Strategy of the United States of America", September 2002

Canadian, U.S. and New Zealand cases

A.G. Canada v. *Coon Come*, [1991] R.J.Q. 922 (C.A.)

Andrews v. *Law Society of British Columbia*, [1989] 1 S.C.R. 143

Capital Cities Communications Inc. v. *Canadian Radio-Television Commission*, [1978] 2 S.C.R. 141

Delgamuukw v. *British Columbia*, [1997] 3 S.C.R. 1010, 153 D.L.R. (4th) 193, (1998) 37 I.L.M. 268

Edwards v. *Attorney-General for Canada*, [1930] A.C. 124 (P.C.)

Francis v. *The Queen*, [1956] S.C.R. 618

Hoani Te Heuheu Tukino v. *Aotea District Maori Land Board*, [1941] A.C. 308 (P.C.)

Hunter v. *Southam Inc.*, [1984] 2 S.C.R. 145

Lovelace v. *Ontario*, [2001] 1 S.C.R. 950

New Zealand Maori Council v. *Attorney General*, [1987] 1 N.Z.L.R. 641 (C.A.)

Mitchell v. *Canada* (*Minister of National Revenue*) [2001] 1 S.C.R. 911, 3 C.N.L.R. 122

Nowegijick v. *The Queen*, [1983] 1 S.C.R. 29

R. v. *Badger*, [1996] 1 S.C.R. 771, [1996] 2 C.N.L.R. 77

R. v. *Gladue*, [1999] 1 S.C. R. 688

R. v. *Keegstra*, [1990] 3 S.C.R. 697

R. v. *Marshall* (No. 2), [1999] 3 S.C.R. 533

R. v. *Powley*, [2000] 2 C.N.L.R. 233 (Ont. Sup. Ct. of Justice); aff'd [2001] 2 C.N.L.R. 291 (Ont. C.A.); 2003 S.C.C. 43

R. v. *Simon* [1985] 2 S.C.R. 387

R. v. *Sioui*, [1990] 1 S.C.R. 1025

R. v. *Taylor and Williams* (1981), 34 O.R. (2d) 360, [1981] 3 C.N.L.R. 114 (C.A.)

Reference re Provincial Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158

Reference re Secession of Québec, [1998] 2 S.C.R. 217, (1998) 161 D.L.R. (4th) 385, 228 N.R. 203, reprinted in (1998) 37 I.L.M 1342

Sparrow v. *The Queen*, [1990] 1 S.C.R. 1075

Slaight Communications Inc. v. *Davidson*, [1989] 1 S.C.R. 1038

Suresh v. *Canada (Minister of Citizenship and Immigration)* (2000), 183 D.L.R. (4th) 629 (F.C.A.); reversed at 2002 SCC 1

U.S. v. *Forty-Three Gallons of Whiskey*, 93 U.S. 188 (1876)

Worcester v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832)

International cases, complaints, etc.

I/A Comm. H.R., *Mary and Carrie Dann* v. *United States*, Case N° 11.140, Report No. 113/01

Inter-American Court of Human Rights, *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention* (arts. 1 and 2, American Convention on Human Rights), Advisory Opinion OC-14/94 of December 1994, Series A No. 14

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Merits, [1986] I.C.J. Rep. 14 (Merits)

Ominayak, Chief of the Lubicon Lake Band v. *Canada* (Communication no. 167/1984), *Official Records of the Human Rights Committee 1989/90*, Vol. II (New York: United Nations, 1995), pp. 381-391

International instruments, documents, etc.

American Indian Law Alliance, "Self-Determined Indigenous Children and Youth", Second session of the Permanent Forum on Indigenous Issues, 12-23 May 2003, United Nations Headquarters, New York

Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990)

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990)

Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000)

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)

B. Boutros-Ghali, Opening Statement by the United Nations Secretary-General, "Human Rights: The Common Language of Humanity", in World Conference on Human Rights, *The Vienna Declaration and Programme of Action June 1993* UN DPI/1394-39399-August 1993-20 M

B. Boutros-Ghali, Statement to U.N. General Assembly, in "Living History: Inauguration of the "International Year of the World's Indigenous People", (1993) 3 Transnat'l L. & Contemp. Probs. 168

Canada, "Perspective on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples", Background paper, Expert Seminar on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples, organized by OHCHR, Geneva, 15-17 December 2003, HR/GENEVA/TSIP/SEM/2003/BP.17

Charter of Paris for a New Europe, A New Era of Democracy, Peace and Unity, November 21, 1990, reprinted in (1991) 30 I.L.M. 190

Charter of the United Nations, Can. T.S. 1945 No. 76; [1976] Yrbk. U.N. 1043; 59 Stat. 1031, T.S. 993

Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979)

Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, U.N. Doc. E/C.12/1/Add.31, 10 December 1998

Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, adopted 11 May 2000, 22nd sess., U.N. Doc. E/C.12/2000/4 (2000)

Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, CERD/C/61/CO/3,23 August 2002

Committee on the Elimination of Racial Discrimination, *General Recommendation XX (48) concerning Non-discriminatory implementation of rights and freedoms (Article 5)*, 15 March 1996 (contained in document A/51/18)

Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting on the Human Dimension of the Conference on Security and Co-operation in Europe*, June 29, 1990, (1990) 29 I.L.M. 1305

Conference on Security and Co-operation in Europe, Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect for Human Rights, Pluralistic Democracy, the Rule of Law, and Procedures for Fact-Finding, October 3, 1991, (1991) 30 I.L.M. 1670

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990

Declaration on Security in the Americas, adopted at the third plenary session of October 28, 2003, Special Conference on Security, Mexico City, OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N.G.A. Res. 53/144, U.N. Doc. A/RES/53/144, 8 March 1999, Annex

Establishment of a Permanent Forum on Indigenous Issues, ECOSOC Res. 2000/22, 28 July 2000

Final Act of the Conference on Security and Co-operation in Europe (Helsinki Final Act), signed by 35 states (including Canada and the United States) on August 1, 1975, *reprinted in* (1975) 14 I.L.M. 1295

D. Garcia-Sayan, *Strengthening the rule of law in building democratic societies: human rights in the administration of justice*, Seminar on the Interdependence Between Democracy and Human Rights, Organized by the Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002

Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105, 7 April 1999

Human Rights Committee, General Comment No. 12, *Article* 1, 21st sess., A/39/40 (1984)

Indigenous and Tribal Peoples Convention, 1989, I.L.O. Convention No. 169, I.L.O., 76th Sess., reprinted in (1989) 28 I.L.M. 1382

Inter-American Democratic Charter, adopted by acclamation by the Hemisphere's Foreign Ministers and signed by the 34 countries of the Americas at the 28th special session of the OAS General Assembly, Lima, Peru, September 11, 2001

International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, (1966) 5 I.L.M. 352. Adopted by U.N. General Assembly on December 21, 1965, opened for signature on March 7, 1966, and entered into force on January 4, 1969

International Covenant on Civil and Political Rights, G.A. Res 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316, Can. T.S. 1976 No. 47 (1966). Adopted by the U.N. General Assembly on December 16, 1966 and entered into force March 23, 1976

International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); Can. T.S. 1976 No. 46 (entered into force 3 January 1976, accession by Canada 19 May 1976)

J. Méndez, "El acceso a la justicia: un enfoque desde los derechos humanos", *Acceso a la Justicia y Equidad: Estudio en Siete Paises de América Latina*, Inter-American Institute of Human Rights/Inter-American Development Bank (San José, Costa Rica, 2000)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. res. 54/263, Annex II, U.N. GAOR Supp. (No. 49), U.N. Doc. A/54/49 (2000), entered into force January 18, 2002

D. Petrova, *Strengthening the Rule of Law in Building Democratic Societies: Human Rights in the Administration of Justice*, Seminar on the Interdependence Between Democracy and Human Rights, Organized by the Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002

"Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education - lessons for life", in *Note by the Secretary-General: Addendum*, A/51/506/Add.1, 12 December 1996, Appendix

Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government, United Nations Meeting of Experts, Nuuk, Greenland, 24-28 September 1991, U.N. Doc. E/CN.4/1992/42 and Add.1

E. Salim, *Striking a Better Balance: The Extractive Industries Review* (World Bank, 2003), 6 vols.

"Secretary-General Says World's Indigenous Peoples 'Have a Home' at UN", Permanent Forum on Indigenous Issues, First Session, 17th & 18th Meetings, HR/4602, 24 May 2002

Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)

Summit of the Americas, 2001, *Plan of Action*, adopted at the Third Summit of the Americas, Québec City, Canada, April 22, 2001

Treaty of Ruby Valley, 1863, 18 U.S. Stat. 689, ratified by the United States in 1866 and proclaimed on October 21, 1869

Treaty of Waitangi, 1840, New Zealand

U.N. Commission on Human Rights, *Human rights and extreme poverty*, Res. 2003/24, 22 April 2003

U.N. Commission on Human Rights, *Human rights and indigenous issues*, Res. 2001/57, 24 April 2001

U.N. Commission on Human Rights, *Promotion of peace as a vital requirement for the full enjoyment of all human rights by all*, Res. 2003/61, 24 April 2003

U.N. Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, E/CN.4/2003/14, 26 February 2003

United Nations Declaration on the Rights of Indigenous Peoples (Draft), in U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/56, 28 October 1994, at 105-115, reprinted in (1995) 34 I.L.M. 541

United Nations Development Program, *Human Development Report 2000* (Oxford: Oxford University Press, 2000)

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990)

United Nations Millennium Declaration, U.N. Doc. A/RES/55/2, 8 September 2000

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990)

U.N. Secretary-General (K. Annan), "Intolerance – Scourge with Deadly Consequences – Threat to Democracy, Peace, Security, Says Secretary-General on International Day", *Press Release*, SG/SM/9003, OBV/391, 12 November 2003

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The "Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985)

U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, Forty-eighth session, E/CN.4/Sub.2/1996/17, 24 May 1996

U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study on treaties, agreements and other constructive arrangements between States and indigenous populations* (M. Alfonso Martinez, Special Rapporteur, Final Report), E/CN.4/Sub.2/1999/20, 22 June 1999

U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Right to Self-Determination: Implementation of United Nations Resolutions*, U.N. Doc. E/CN.4/Sub.2/405/Rev.1 (1980) (H. Gros Espiell, Special Rapporteur)

U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples and their relationship to land: Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes,* E/CN.4/Sub.2/2001/21, 11 June 2001

United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration*, adopted in Durban, South Africa, 8 September 2001

United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), reprinted in (1993) 32 I.L.M. 1661

United States of America, "Presentation of the Government of the United States of America", Expert Seminar on treaties, agreements and other constructive arrangements between States and Indigenous Peoples, organized by OHCHR, Geneva, December 17, 2003

Universal Declaration of Human Rights, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948). Adopted by the U.N. General Assembly on December 10, 1948

Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679 (1969)

Vienna Declaration and Programme of Action, adopted on June 25, 1993 at the United Nations World Conference on Human Rights, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), reprinted in (1993) 32 I.L.M. 1661

Working Group on Indigenous Populations, "Principle Theme: Indigenous Peoples and the Their Right to Development, Including Their Right to Participate in Development Affecting Them", *Note by the secretariat*, E/CN.4/Sub.2/AC.4/2001/2, 20 June 2001

Working Paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20, E/CN.4/Sub.2/2001/2, 18 August 2001

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration, adopted* in Durban, South Africa, 8 September 2001

Commission on First Nations and Métis Peoples and Justice Reform

www.justicereformcomm.sk.ca